

No. 15080

United States
Court of Appeals
for the Ninth Circuit

E. J. STANFILL, as Trustee and ELFRIEDA
MAY, Appellants,

vs.

RALPH B. DEFENBACH, as Trustee,
Appellee.

Transcript of Record

Appeal from the United States District Court for the Eastern
District of Washington, Northern Division

FILED

MAY 18 1956

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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United States District Court for the Eastern Dis-
trict of Washington, Southern Division

Civil Action No. 1021

SUN LIFE ASSURANCE COMPANY of CAN-
ADA, a corporation, Plaintiff,

vs.

MARY P. WEYEN, individually and as guardian
of Daryl Weyen and Carolyn Weyen, minors,
ELFRIEDA MAY, RALPH B. DEFEN-
BACH as trustee, E. J. STANFILL as trustee
and E. J. STANFILL as executor of the estate
of Robert Francis Weyen, deceased,
Defendants.

COMPLAINT

Plaintiff alleges:

First Count

(Policy 1,447,698)

1. This is a civil action of interpleader arising under the Act of June 25, 1948, c. 646, 62 Stat. 931, 28 USCA § 1335; the Act of June 25, 1948, c. 646, 62 Stat. 936, 28 USCA § 1397; the Act of June 25, 1948, c. 646, 62 Stat. 970, amended May 24, 1949, c. 139, § 117, 63 Stat. 105, 28 USCA § 2361; and Rules 22 and 65 (e) of the Federal Rules of Civil Procedure, as hereinafter more fully appears. The policies of insurance here involved are of amounts of \$500 or more and two or more adverse claimants of diverse citizenship as defined in section 1332 of

title 28 of USCA are claiming or may claim to be entitled thereto.

2. On October 30, 1934, plaintiff issued to Robert Frances Weyen (whose true middle name was Francis) a policy of life insurance number 1,447,698 whereby plaintiff promised to [1*] pay to Elfrieda Weyen as beneficiary the sum of \$2000 upon the death of Robert Frances Weyen from accidental means.

3. On April 16, 1955, Robert Francis Weyen died at Asotin, Washington, as the result of an accident. Said policy was at that time in effect.

4. Mary P. Weyen is the surviving divorced wife of Robert Francis Weyen and is the natural mother and the duly appointed, qualified and acting general guardian of the persons and estates of Daryl Weyen and Carolyn Weyen, surviving minor children of Robert Francis Weyen, under order of the Superior Court of the State of Washington for Asotin County. Mary P. Weyen in her individual and representative capacities claims or may claim an interest in the proceeds of said policy as against all persons except Elfrieda May. She and said minors reside at Clarkston, Washington, and are citizens of the State of Washington.

5. Elfrieda May was formerly named Elfrieda Weyen, is the surviving mother of Robert Francis Weyen and was the original beneficiary of said policy. On October 7, 1954, Robert Francis Weyen

* Page numbers appearing at foot of page of original Transcript of Record.

assigned all his right, title and interest in said policy to Elfrieda May. On October 7, 1954, Robert Francis Weyen and E. J. Stanfill assigned all their right, title and interest in said policy to Elfrieda May. Elfrieda May claims to have paid all or some of the premiums paid on said policy. Elfrieda May claims or may claim an interest in the proceeds of said policy. She resides at Los Angeles, California, and is a citizen of the state of California.

6. On September 23, 1953, Robert Francis Weyen changed the beneficiary of said policy to E. J. Stanfill as trustee under a trust agreement dated September 23, 1953. Said trust agreement [2] has not been revoked of record by either the trustor or trustee. E. J. Stanfill as trustee claims or may claim an interest in the proceeds of said policy. He resides at Enterprise, Oregon, and is a citizen of the state of Oregon.

7. E. J. Stanfill is the duly appointed, qualified and acting executor under the will of Robert Francis Weyen in the probate thereof now pending in the Probate Court of the State of Idaho for Lewis and Clark County. E. J. Stanfill as executor of said estate claims or may claim some interest in the proceeds of said policy. He resides at Enterprise, Oregon, and is a citizen of the state of Oregon.

8. The claims above alleged are conflicting and adverse and by reason thereof plaintiff is or may be exposed to multiple liability or multiple vexation by reason of one liability. By reason thereof plaintiff is in great doubt as to which defendant or

defendants are entitled to be paid the proceeds of said policy.

9. The amount due under said policy to the person or persons entitled to the proceeds thereof is \$1,831.20. The computation of said amount appears in exhibit A of this complaint. With the filing of this complaint plaintiff has paid said amount into the registry of this court there to abide the judgment of the court.

10. The sum of \$37 is reasonable to be allowed to plaintiff's attorneys for their services with respect to this count.

Second Count

(Policies 1,710,519, 1,755,413, 1,852,251, 1,861,700, 1,861,701.)

1. With respect to the five policies under this count [3] plaintiff repeats the allegations of paragraph 1 of the first count.

2. On June 27, 1944, plaintiff issued to Robert Francis Weyen a policy of life insurance No. 1,710,519 whereby plaintiff promised to pay to Mary Phyllis Weyen as beneficiary the sum of \$2,000 upon the death of Robert Francis Weyen from accidental means. On July 11, 1946, plaintiff issued to Robert F. Weyen (whose middle name was Francis) a policy of life insurance No. 1,755,413 whereby plaintiff promised to pay to Mary P. Weyen (whose middle name was Phyllis) as beneficiary the sum of \$2,000 upon the death of Robert Francis Weyen from accidental means. On June 5, 1950, plaintiff issued to Robert F. Weyen a policy of life insur-

ance No. 1,852,251 whereby plaintiff promised to pay to Mary P. Weyen as beneficiary the sum of \$4,000 upon the death of Robert F. Weyen from accidental means. On October 25, 1950, plaintiff issued to Robert F. Weyen a policy of life insurance No. 1,861,700 whereby plaintiff promised to pay to Mary P. Weyen as beneficiary the sum of \$20,000 upon the death of Robert F. Weyen from accidental means. On October 25, 1950, plaintiff issued to Robert F. Weyen a policy of life insurance No. 1,861,701 whereby plaintiff promised to pay to Mary P. Weyen as beneficiary the sum of \$20,000 upon the death of Robert F. Weyen from accidental means.

3. With respect to the five policies under this count plaintiff repeats the allegations of paragraph 3 of the first count.

4. Mary P. Weyen is the surviving divorced wife of Robert Francis Weyen and is the natural mother and the duly appointed, qualified and acting general guardian of the persons and estates of Daryl Weyen and Carolyn Weyen, surviving minor [4] children of Robert Francis Weyen, under order of the Superior Court of the State of Washington for Asotin County. Mary P. Weyen in her individual and representative capacities claims or may claim an interest in the proceeds of said policies. She and said minors reside at Clarkston, Washington, and are citizens of the state of Washington.

5. Elfrieda May is the surviving mother of Robert Francis Weyen. She claims to have paid all or

some of the premiums paid on said policies and claims or may claim an interest in the proceeds of said policies. She resides at Los Angeles, California, and is a citizen of the state of California.

6. With respect to the five policies under this count plaintiff repeats the allegations of paragraph 6 of the first count.

7. On November 24, 1954, Robert F. Weyen assigned for value said policies to Ralph B. Defenbach as trustee for the benefit of creditors under a trust agreement dated November 16, 1954, and transmitted said assignment to plaintiff with a letter stating "The intention of this Assignment For Value is to change the beneficiary on all the policies to read as follows: 'Ralph B. Defenbach, Trustee, under that certain Assignment to Trustee for Benefit of Creditors, dated 16 November 1954'." On the same date an identical assignment was executed by Robert F. Weyen and E. J. Stanfill. Ralph B. Defenbach as trustee claims or may claim an interest in the proceeds of said policies. He resides at Lewiston, Idaho, and is a citizen of the state of Idaho.

8. With respect to the five policies under this count plaintiff repeats the allegations of paragraph 7 of the first count.

9. With respect to the five policies under this count [5] plaintiff repeats the allegations of paragraph 8 of the first count.

10. The amounts due under said policies to the person or persons entitled to the proceeds thereof are:

Policy No. 1,710,519.....	\$ 1,606.58
Policy No. 1,755,413.....	1,702.49
Policy No. 1,852,251.....	3,683.15
Policy No. 1,861,700.....	19,603.42
Policy No. 1,861,701.....	19,603.42
<hr/>	
Total.....	\$46,199.06

The computations of said amounts appear in exhibit A of this complaint. With the filing of this complaint plaintiff has paid said amounts into the registry of this court there to abide the judgment of the court.

11. The sum of \$924 is reasonable to be allowed to plaintiff's attorneys for their services with respect to this count.

Third Count

(Policy 1,919,863.)

1. Plaintiff repeats the allegations of paragraph 1 of the first count.

2. On January 5, 1953, plaintiff issued to Robert Francis Weyen a policy of life insurance No. 1,919,863 whereby plaintiff promised to pay to his executors or administrators as beneficiary the sum of \$6,000 upon his death from accidental means.

3. Plaintiff repeats the allegations of paragraph 3 of the first count.

4. With respect to the policy under this count plaintiff repeats the allegations of paragraph 4 of the second count. [6]

5. With respect to the policy under this count

plaintiff repeats the allegations of paragraph 5 of the second count.

6. Plaintiff repeats the allegations of paragraph 6 of the first count.

7. With respect to the policy under this count plaintiff repeats the allegations of paragraph 7 of the second count.

8. Plaintiff repeats the allegations of paragraph 7 of the first count.

9. Plaintiff repeats the allegations of paragraph 8 of the first count.

10. The amount due under said policy to the person or persons entitled to the proceeds thereof is \$5,746.87. The computation of said amount appears in exhibit A of this complaint. With the filing of this complaint plaintiff has paid said amount into the registry of this court there to abide the judgment of the court.

11. The sum of \$115 is reasonable to be allowed to plaintiff's attorneys for their services with respect to this count.

Fourth Count

(Policy 1,952,847)

1. Plaintiff repeats the allegations of paragraph 1 of the first count.

2. On December 16, 1953, plaintiff issued to Robert Francis Weyen a policy of life insurance No. 1,952,847 whereby plaintiff promised to pay to "E. J. Stanfill, as trustee under Trust Agreement dated the nineteenth day of October 1953" as bene-

ficiary the sum of \$10,000 upon the death of Robert Francis Weyen from accidental means. The date October 19, 1953, appearing in said designation of beneficiary was in error and the date [7] of the Trust Agreement there referred to was in fact September 23, 1953.

3. Plaintiff repeats the allegations of paragraph 3 of the first count.

4. With respect to the policy under this count plaintiff repeats the allegations of paragraph 4 of the second count.

5. With respect to the policy under this count plaintiff repeats the allegations of paragraph 5 of the second count.

6. With respect to the policy under this count plaintiff repeats the allegations of paragraph 7 of the second count.

7. Plaintiff repeats the allegations of paragraph 7 of the first count.

8. Plaintiff repeats the allegations of paragraph 8 of the first count.

9. The amount due under said policy to the person or persons entitled to the proceeds thereof is \$9,767.30. The computation of said amount appears in exhibit A of this complaint. With the filing of this complaint plaintiff has paid said amount into the registry of the court there to abide the judgment of the court.

10. The sum of \$195 is reasonable to be allowed to plaintiff's attorneys for their services with respect to this count.

Wherefore plaintiff demands that the court adjudge:

1. That until the further order of the court each of the defendants be restrained from instituting any action against plaintiff for recovery of the amounts of said policies or any part thereof and that upon final judgment herein such restraint be made a permanent injunction. [8]

2. That the defendants be required to interplead and settle among themselves their rights to the money due under said policies, that plaintiff be discharged from all liability in the premises except to the person or persons whom the court shall adjudge entitled to the amounts of said policies, and that the amounts paid into the registry of this court upon the filing of the complaint herein be adjudged full discharge by the plaintiff of all its liabilities under said policies.

3. That plaintiff recover its costs and its attorney's fee herein in a reasonable amount determined by the court and made a charge against the funds in court or the defendants as the court shall determine.

4. That the court enter such other orders and judgment as are necessary and proper in the premises.

Spokane, Washington, July 7, 1955.

/s/ J. W. GREENOUGH,

/s/ GRAVES, KIZER, GREENOUGH &
GAISER,

Attorneys for Plaintiff

[9]

EXHIBIT "A"

**DETAILED STATEMENT OF AMOUNTS PAYABLE UNDER
THE POLICIES AS THEY APPEAR ON CHEQUE No.
273453 ATTACHED HERETO.**

RE: THE LATE ROBERT F. WEYEN

Policy No. 1,447,698—

Sum Assured.....	\$ 1,000.00	218
Double Indemnity Accident Benefit.....	1,000.00	218
Paid up Additions.....	232.00	218
Loan with interest to the date of death.....	\$ 400.80	126A/3/32
To Balance.....	1,831.20	
	<hr/>	
	\$ 2,232.00	\$ 2,232.00
	<hr/>	<hr/>

Policy No. 1,710,519—

Sum Assured.....	\$ 1,000.00	218
Double Indemnity Accident Benefit.....	1,000.00	218
Dividends on Deposit.....	61.47	122/48
Loan with interest to the date of death.....	\$ 454.89	126A/3/32
To Balance.....	1,606.58	
	<hr/>	
	\$ 2,061.47	\$ 2,061.47
	<hr/>	<hr/>

Policy No. 1,755,413—

Sum Assured.....	\$ 1,000.00	218
Double Indemnity Accident Benefit.....	1,000.00	218
Dividends on Deposit.....	48.05	122/48
Loan with interest to the date of death.....	\$ 345.56	126A/3/32
To Balance.....	1,702.49	
	<hr/>	
	\$ 2,048.05	\$ 2,048.05
	<hr/>	<hr/>

Policy No. 1,852,251—

Sum Assured.....	\$ 2,000.00	218
Accidental Death Benefit.....	2,000.00	218
Dividends on Deposit.....	33.35	122/48
Advance with interest to the date of death.....\$	350.20	
To Balance.....\$	3,683.15	
	<u>\$ 4,033.35</u>	<u>\$ 4,033.35</u>

/s/ C. H. HOPKINS

Policy No. 1,861,700—

Sum Assured.....	\$10,000.00	218
Accidental Death Benefit.....	10,000.00	218
Dividends on Deposit.....	152.45	122/48
Advance with interest to the date of death.....\$	549.03	126A/3/32
To Balance.....	19,603.42	
	<u>\$20,152.45</u>	<u>\$20,152.45</u>

Policy No. 1,861,701—

Sum Assured.....	\$10,000.00	218
Accidental Death Benefit.....	10,000.00	218
Dividends on Deposit.....	152.45	122/48
Advance with interest to the date of death.....\$	549.03	126A/3/32
To Balance.....	19,603.42	
	<u>\$20,152.45</u>	<u>\$20,152.45</u>

Policy No. 1,919,863—

Sum Assured.....	\$ 3,000.00	218
Accidental Death Benefit.....	3,000.00	218
Dividends on Deposit.....	15.84	122/48
Advance with interest to the date of death.....\$	268.97	126A/3/32
To Balance.....\$	5,746.87	
	<u>\$ 6,015.84</u>	<u>\$ 6,015.84</u>

Policy No. 1,952,847—

Sum Assured.....	\$ 5,000.00	218
Accidental Death Benefit.....	5,000.00	218
Advance with interest to the date of death.....\$ 232.70		126A/3/32
To Balance.....\$ 9,767.30		
	<u>\$10,000.00</u>	<u>\$10,000.00</u>

June 30, 1955 /s/ C. H. HOPKINS

[Endorsed]: Filed July 8, 1955.

[Title of District Court and Cause.]

ANSWER AND CROSS-CLAIM

Defendant, E. J. Stanfill, as Trustee, as Guardian of the Estates of Daryl Weyen and Carolyn Weyen and as Executor, admits all of the averments and allegations in Counts 1, 2, 3 and 4 of Plaintiff's Complaint except as follows:

1. With reference to paragraphs 4 in each Count, Defendant admits that Mary P. Weyen is the surviving divorced wife of Robert Francis Weyen and the natural mother and guardian of the persons of the minor children, Daryl Weyen and Carolyn Weyen, and that she and said minors reside at Clarkston, Washington, and are citizens of the State of Washington. Defendant denies that Mary P. Weyen is guardian of the estates of said minor children or that she, in her individual or representative capacity, claims any interest in the proceeds of any of said policies. Mary P. Weyen withdrew

as Guardian of the estates of said minors on July 19, 1955. [13]

2. With reference to paragraph 7 of the Second, Third and Fourth Counts, Defendant, upon information and belief, denies each and every affirmative matter, thing or fact therein alleged and the whole thereof.

Cross-Claim Against: Elfrieda May, Ralph B. Defenbach as Trustee, Mary P. Weyen as an individual and as Guardian of the persons of Daryl Weyen and Carolyn Weyen:

Cross-Claimant alleges:

I.

That Cross-Claimant, E. J. Stanfill, is the duly appointed, qualified and acting guardian of the estates of Daryl Weyen and Carolyn Weyen, minors, under and by virtue of Letters of Guardianship issued out of Superior Court of Asotin County, State of Washington, in Cause No. 7807, on the 19th day of July, 1955, a true copy of which Letters of Guardianship are attached hereto, marked Exhibit "A", and incorporated herein by reference.

II.

That Cross-Claimant, E. J. Stanfill, is the duly designated and acting Trustee for the benefit of the minors, Daryl Weyen and Carolyn Weyen, under and by virtue of one certain Trust Agreement, dated September 23, 1953, filed for record and recorded in the office of Auditor for Asotin County, State of Washington, on June 24, 1954 and re-

corded in Book "E" of Miscellaneous Records of said County at page 407, a copy of which Trust Agreement is annexed hereto, marked Exhibit "B" and incorporated herein by reference; that said Agreement has never been revoked of record or at all by either Trustee or Trustor and is still in full force and effect; that all parties hereto had actual or constructive notice thereof prior to November 16, 1954.

III.

That the Trustor, Robert Francis Weyen, subsequent to the execution of the Trust Agreement and in accordance with the terms thereof, caused E. J. Stanfill to be designated as beneficiary of each of the several policies mentioned in Plaintiff's Complaint and delivered said policies to the said [14] E. J. Stanfill as Trustee; that the minor children, Daryl Weyen and Carolyn Weyen thereupon and at that time, acquired a vested interest in and to said policies and the proceeds of death payments thereon; that said vested interest was irrevocable under the terms, conditions and provisions of the Trust Agreement.

IV.

That the subsequent pretended Assignment of Policy No. 1447698 to Elfrieda May and the subsequent pretended Assignment of the remaining policies to Ralph B. Defenbach as Trustee for the benefit of creditors, was and is void as without consideration; as a violation of the Trust Agreement of September 23, 1953 of which Ralph B. Defenbach and Elfrieda May had actual or con-

structive notice, and as an attempt to deprive the minor children, Daryl Weyen and Carolyn Weyen, of vested interests without their consent.

V.

That this Cross-Claimant, in his capacity as Trustee, has never released and could not lawfully release the vested interests of the minor children in and to said policies or any of them.

VI.

That the Trustor, Robert Francis Weyen, had no lawful authority to change the beneficiary of, or assign, said policies in excess of pledging same or exercising the loan privileges; that his attempt to do so was void as a violation of the irrevocable Trust Agreement and an effort to deprive minor children of a vested interest in the policies created by said Trust Agreement.

VII.

That the pretended Assignments of said policies and attempts to change beneficiary thereof to Elfrieda May and Ralph B. Defenbach as Trustee, respectively, was and is inequitable and unconscionable in that if allowed to stand, the action would deprive two minor children of their sole means of support and livelihood, that said children would be obliged to become objects of charity and thus defeat the plans, intent and purpose of decedent, Robert Francis [15] Weyen, as evidenced by Trust Agreement of December 23, 1953 as sup-

ported by the expression in his Last Will and Testament, a copy of which is annexed hereto and marked Exhibit "C", wherein decedent expressly made no provision for the children because of a concurrently executed Trust Agreement (Ex. "B").

VIII.

That the interests of Elfrieda May in and to said policies are junior and inferior to the interests of the minors, Daryl Weyen and Carolyn Weyen.

IX.

That the interests of Ralph B. Defenbach as Trustee, if any, are junior and inferior to the interests of the minors, Daryl Weyen and Carolyn Weyen.

X.

That E. J. Stanfill as Executor is a necessary and proper party to the within action and appears as such; that your Executor is advised and believes and therefore alleges that his rights as executor are junior and inferior to the interests of the minor children but that, in the event the Court should hold for any reason that the Trustee or Guardian for the minors are not entitled to the proceeds of said policies, then your Executor claims a superior right to said proceeds as against Ralph B. Defenbach as Trustee, for the reason and on the ground that the purported Assignment for the benefit of creditors was an operating agreement only and ceased and determined upon the death of Robert Francis Weyen.

Wherefore, Cross-Claimant demands that the Court adjudge:

I.

That the interests of Elfrieda May, Ralph B. Defenbach as Trustee, Mary P. Weyen as an individual and as guardian of the persons of [16] the minors, Daryl Weyen and Carolyn Weyen, and E. J. Stanfill as Executor, in and to the proceeds of the several policies mentioned herein, be held for naught and that said persons be forever restrained and enjoined from asserting or claiming any interest in and to the proceeds of any of said policies of insurance or any portion thereof.

II.

That this Cross-Claimant as Trustee (or in the alternative as Guardian) recover and be awarded all the net proceeds of said policies as deposited in this Court.

III.

That the rights of Executor be determined.

IV.

That the Court enter such other Orders and Judgment as are necessary and proper in the premises.

Dated this 11th day of August, 1955.

/s/ S. DEAN ARNOLD,

Attorney for Defendant E. J. Stanfill as Guardian,
as Trustee and as Executor.

[17]

EXHIBIT "A"

(Copy)

In the Superior Court of the State of Washington
for Asotin County, (in Probate) No. 7807.
In the matter of the guardianship of Daryl
Weyen and Carolyn Weyen, Minors.

LETTERS OF GUARDIANSHIP

Whereas, on the 19th day of July, 1955, E. J. Stanfill was, by order of this Court duly made and entered on said date, appointed Guardian of the estates of Daryl Weyen and Carolyn Weyen, Minors, and whereas the said Guardian has filed his bond as such in the office of the Clerk of this Court, and the same has been approved; now therefore,

Know All Men by These Presents, That E. J. Stanfill is appointed guardian of estates of Daryl Weyen and Carolyn Weyen, Minors, as aforesaid.

Witness, The Hon. Thomas G. Jordan, Judge of said Court, and the Seal thereof, this 19th day of July, 1955.

[Seal] /s/ BEN F. TAPLIN,
Clerk of Superior Court.

State of Washington,
County of Asotin—ss.

I do solemnly swear that I will support the Constitution of the United States, and the Constitution and Laws of the State of Washington, and that I

will faithfully perform the duties of my office as guardian of the estates of Daryl Weyen and Carolyn Weyen, Minors.

/s/ E. J. STANFILL

Subscribed and sworn to before me this 19th day of July, 1955.

[Seal] /s/ S. DEAN ARNOLD,
Notary Public in and for the State of Washington,
residing at Clarkston. [18]

Received and filed July 19, 1955. /s/ Ben F. Taplin, Clerk.

EXHIBIT "B"

TRUST AGREEMENT

(Copy)

This Trust Agreement, identified as Trust No. 1 made this 23rd day of September, 1953, by and between Robert F. Weyen of Clarkston, Asotin County, Washington, hereinafter called the Donor, and E. J. Stanfill, Attorney at Law, Clarkston, Washington, hereinafter called the Trustee,

Witnesseth:

Whereas, the donor has designated the Trustee as beneficiary in the insurance policies described in the schedule hereto attached, made a part hereof, and entitled Schedule of Policies of the Robert F. Weyen Trust, and has delivered such policies to the

Trustee in order that it may, as such beneficiary, collect the proceeds of such policies; and

Whereas, the donor may later designate Trustee as like beneficiary in additional insurance policies,

Now, Therefore, for and in consideration of One Dollar (\$1.00) paid by each of the parties to the other, and in further consideration of the covenants herein contained of the parties hereto, it is hereby agreed that the Trustee shall hold and administer the said insurance policies and the proceeds thereof and all the other property described in said schedule, and all additional insurance policies, that may, from time to time, be added to this Trust, in trust for the uses and purposes and upon the terms and conditions hereinafter set forth.

1. This trust shall continue for a period of fifteen years (15) from date hereof.

2. Upon the death of the donor during the trust term the Trustee shall collect all sums due under the policies subject to the terms hereof.

3. After the death of the donor during the trust term the trustee shall hold and dispose of the income and principal of the trust as follows: [19]

- a. All proceeds of said policy shall be held by the trustee and be used by the trustee for the support, education and maintenance of Daryl Weyen and Carolyn Weyen, children of the donor.

- b. The trustee shall pay over to the above named children as each reaches the age of Twenty One (21) one half each of the principal of the Trust Fund.

4. All proceeds of said policies, inclusive of all

rights to take and receive payment of cash, surrender or loan payments and all dividends or distributions payable either to the insured or the beneficiary, shall be payable and be paid to the Trustee, and no insurance company issuing any such policies, or making any such payments shall be responsible for or be required to look to the proper discharge of the trust hereof or the application of such payments by the Trustee, and with the absolute right vested in the Trustee to pledge any such policy as collateral, surrender the same either for cash of paid-up insurance value or avail itself of any option granted in any such policy to the insured and his assigns, without the signature or assent of the donor.

5. The Trustee shall have the right and power, so far as the same exist under the terms of said policies of life insurance, to agree and contract with the insurance company issuing such policies to provide that any amount payable thereunder as a principal payment thereunder shall be paid by such insurance company in installments, upon such basis of annuity interest plan or installment payments as may be available under the terms of such policy or policies, such payments to be received by the Trustee and by it distributed to the beneficiaries hereunder as hereinafter provided.

6. In the event that the trust shall terminate during the life of the donor, the Trustee shall thereupon assign, transfer and deliver the trust property to the donor. [20]

7. The donor specifically reserves the right, dur-

ing the term of this trust, to pledge any of such policies as collateral or to exercise the loan rights as provided in said policies, and in the event the donor makes application for such loans, it is hereby expressly understood that the signature of the Trustee named herein shall not be required to join in the application for said loans.

In Witness Whereof the parties hereto have hereunto set their hands and seals this 23rd day of September, 1953.

/s/ ROBERT F. WEYEN

/s/ E. J. STANFILL

State of Washington,
County of Asotin—ss.

On this 23rd day of September, 1953 personally appeared before me Robert F. Weyen and E. J. Stanfill, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 23rd day of September, 1953.

.....

Notary Public in and for the State of Washington,
residing at Clarkston therein.

(Recorded June 24, 1954 in Book "E" of Miscellaneous at page 407, records of Asotin County, State of Washington, office of County Auditor) [21]

Schedule of Insurance Policies of Robert F. Weyen
Trust

- A. Life Insurance Policies,
Sun Life Assurance Co. No. 1755413
Sun Life Assurance Co. No. 1710519
Sun Life Assurance Co. No. 1447698
Sun Life Assurance Co. No. 1852251
Sun Life Assurance Co. No. 1861700
Sun Life Assurance Co. No. 191865
Sun Life Assurance Co. No. 1861701
- B. Life Insurance Policies,
The Macabees Insurance Co. No. 1937383
The Macabees Insurance Co. No. 1845025
- C. Life Insurance Policy,
The Equitable Life
Insurance Company No. GN 12,179,801 [22]

EXHIBIT "C"

LAST WILL AND TESTAMENT

(Copy)

I, Robert F. Weyen, over the age of 21 years, a resident of the County of Asotin, State of Washington, being of sound and disposing mind and memory and not acting under menace, duress, fraud or undue influence of any person whomsoever, do make, publish and declare this to be my Last Will and Testament, and I do hereby expressly revoke all other wills, codicils to wills and testamentary writings heretofore made by me.

First: I direct that my executor, hereinafter named, pay and discharge all my just debts and funeral and testamentary expenses.

Second: I make no provision for my children, namely, Daryl Weyen and Carolyn Weyen, because I have heretofore provided for them through Insurance Policies on my life; however, should said policies lapse or become null and void I hereby give, devise and bequeath to my said children the sum of \$10,000.00 share and share alike.

Third: All the rest, residue and remainder of my property, real, personal and mixed, at whatever time acquired by me and wheresoever situated, I give, devise and bequeath to Emilie Mullins.

Fourth: I hereby nominate and appoint E. J. Stanfill, Attorney at Law, Clarkston, Washington, executor of this my Last Will and Testament, to act without bond and without the intervention of the Court.

Fifth: I hereby appoint E. J. Stanfill, Attorney at Law, Clarkston, Washington, the guardian of the estate that my above named children inherit from me and of all property that they become entitled to by reason of my death.

In Witness Whereof, I have hereunto set my hand and seal this 23rd day of September, 1953.

/s/ ROBERT F. WEYEN

The foregoing instrument, consisting of this page only, was on the 23rd day of September, 1953, at

Clarkston, Washington, signed, sealed and published by Robert F. Weyen as and declared to be his Last Will and Testament, in the presence of each of us, who at his request, and in his presence and in the presence of each other, have subscribed our names as witnesses thereto.

/s/ JOAN VOROUS

Residing at Clarkston,
Washington

/s/ E. J. STANFILL

Residing at Clarkston,
Washington [23]

[Endorsed]: Filed Aug. 15, 1955.

[Title of District Court and Cause.]

ANSWER

Mary P. Weyen, as an individual and as guardian of the persons of Daryl Weyen and Carolyn Weyen, appears herein and disclaims any interest in and to the proceeds of the policies mentioned in Plaintiff's Complaint as an individual or as guardian of the persons of the minors, Daryl Weyen and Carolyn Weyen and joins in the prayer of the Answer and Cross-Claim of E. J. Stanfill as Trustee.

Dated this 11th day of August, 1955.

/s/ S. DEAN ARNOLD,

Attorney for Mary P. Weyen as an individual and
as guardian of the persons of the minors, Daryl
Weyen and Carolyn Weyen. [24]

[Endorsed]: Filed Aug. 15, 1955.

[Title of District Court and Cause.]

ANSWER

Comes now Ralph B. Defenbach as trustee, and
in answer to plaintiff's complaint admits, denies
and alleges as follows:

Answer to First Count

(Policy 1,447,698)

I.

The defendant admits the allegations contained in
Paragraphs 1, 2, 3, 4, 7, 8 and 9 of plaintiff's first
count.

II.

In answer to Paragraph 5, the defendant admits
that Elfrieda May was formerly Elfrieda Weyen
and is the surviving mother of Robert Francis
Weyen, and was the original beneficiary on said
policy, and now resides in Los Angeles, California.
That the defendant is without knowledge or infor-
mation sufficient to form a belief as to the truth of
all of the other allegations contained in Paragraph

5 and therefore, on information and belief, denies the same.

III.

In answer to Paragraph 6, this defendant is without knowledge or [25] information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore upon information and belief denies the same, excepting that this defendant admits that E. J. Stanfill resides at Enterprise, Oregon, and is a citizen of the State of Oregon.

IV.

That this defendant is without information or knowledge sufficient to form a belief as to what is a reasonable sum to be allowed plaintiff's attorneys for their services with respect to Count One, and therefore denies the same.

Answer to Second Count

(Policies 1,710,519 - 1,755,413 - 1,852,251 - 1,861,700 - 1,861,701)

I.

The defendant admits the allegations of Paragraphs 1, 2, 3, 4, 5, 7, 8, 9, and 10 of plaintiff's second count.

II.

In answer to Paragraph 6 this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and therefore, upon information and belief, denies the same, excepting that this defendant admits that E. J. Stanfill resides at Enter-

prise, Oregon, and is a citizen of the State of Oregon.

III.

That this defendant is without information or knowledge sufficient to form a belief as to what is a reasonable sum to be allowed plaintiff's attorneys for their services with respect to Count Two and therefore denies the same.

Answer to Third Count

(Policy 1,919,863)

I.

The defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 7, 8, 9 and 10 of plaintiff's Third Count.

II.

In answer to Paragraph 6, this defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations [26] contained in Paragraph 6, and therefore, on information and belief, denies the same, excepting that this defendant admits that E. J. Stanfill resides at Enterprise, Oregon, and is a citizen of the State of Oregon.

III.

That this defendant is without information or knowledge sufficient to form a belief as to what is a reasonable sum to be allowed plaintiff's attorneys for their services with respect to Count Three, and therefore denies the same.

Answer to Fourth Count
(Policy 1,952,847)

I.

Defendant admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of plaintiff's Fourth Count.

II.

That this defendant is without information or knowledge sufficient to form a belief as to what is a reasonable sum to be allowed plaintiff's attorneys for their services with respect to Count Four, and therefore denies the same.

Affirmative Defense

Comes now Ralph B. Defenbach as trustee, and for an affirmative defense alleges as follows:

I.

That on or about the 16th day of November, 1954, at Lewiston, Idaho, Robert F. Weyen (whose middle name is Francis) entered into an assignment to trustee for benefit of creditors, a copy of which assignment is attached hereto, incorporated herein, made a part hereof, and marked Exhibit "A", and which assignment by Paragraph IX thereof made Ralph B. Defenbach, as trustee for his creditors, the beneficiary of the following numbered policies which are involved in this interpleader action, to-wit: Sun Life Assurance Company of Canada policies No. 1,710,519, 1,755,413, 1,852,251, 1,861,700 and 1,861,701; and that immedi-

ately thereafter the necessary [27] documents were prepared and forwarded to the plaintiff herein making Ralph B. Defenbach, as trustee, beneficiary under all of said policies, and that said change of beneficiary was attached to said policies by the home office of said insurance company, and that when said policies were returned to Lewiston, Idaho, they were delivered to Ralph B. Defenbach, as trustee, and were held by him under the terms of said assignment to trustee for the benefit of creditors until they were delivered to the plaintiff immediately succeeding the accident which resulted in the death of Robert Francis Weyen.

II.

That pursuant to the terms of said assignment to trustee for benefit of creditors, the said Ralph B. Defenbach immediately entered into his duties as trustee and continued to manage the affairs of said trust at all times from November 16, 1954 to and including the time of the filing of this Answer; that said assignment to trustee for benefit of creditors was never altered, amended or revoked during the lifetime of Robert Francis Weyen or thereafter, and is still in full force and effect and is still being managed and operated by the defendant Ralph B. Defenbach as trustee.

III.

That the change of beneficiary by Robert Francis Weyen to Ralph B. Defenbach, as trustee, entitled the said Ralph B. Defenbach to the entire pro-

ceeds of the above numbered policies, and that said Ralph B. Defenbach, as trustee, is now and at all times since the death of the said Robert Francis Weyen entitled to all of the proceeds due under all of said policies.

Wherefore, the defendant demands that the Court adjudge:

1. That Ralph B. Defenbach, as trustee, is entitled to all of the proceeds of Sun Life Assurance Company of Canada policies No. 1,710,519, 1,755,413, 1,852,251, 1,861,700 and 1,861,701, which proceeds total the sum of \$61,713.23, and that judgment be granted in favor of the said Ralph B. Defenbach, as Trustee, awarding unto him all of the proceeds of said policies, and that said restraining order issued on July 15, 1955, in said cause be dissolved and declared of no further force and effect insofar as the said Ralph B. Defenbach, as trustee, is concerned. [28]

2. That the defendant have and recover his costs and disbursements in said action.

3. That the Court enter such other orders and judgments as are necessary and proper in the premises.

/s/ PAUL C. KEETON

R. MAX ETTER and ELLSWORTH

I. CONNELLY

/s/ By R. MAX ETTER

[29]

EXHIBIT "A"

ASSIGNMENT TO TRUSTEE FOR BENEFIT
OF CREDITORS

This indenture, made on this 16th day of November, 1954, by and between Robert F. Weyen, Party of the First Part, of Lewiston, Idaho, and Ralph B. Defenbach, Party of the Second Part and hereinafter referred to as Trustee; and the persons listed in Exhibits A and B, hereinafter referred to as Parties of the Third Part;

Witnesseth: That,

Whereas, the Party of the First Part is indebted to many persons on both open accounts and secured claims, and in addition thereto, now has tax liens filed against his property and income by the Collector of Internal Revenue, Boise, Idaho, and the Employment Security Agency, Boise, Idaho, and he is at the present time unable to pay in full said obligations, but is willing to convey all of his property and future income, along with other security hereinafter referred to, for the benefit of his creditors, with preferences and priorities as are hereinafter set out;

Now, Therefore, the Party of the First Part, in consideration of the premises and the covenants and assignments hereinafter contained, agrees with Second Party and Third Parties as follows:

I.

That this assignment shall become effective on the 16th day of November, 1954, and shall remain in effect until terminated as hereinafter provided.

II.

The Party of the First Part transfers and hereby assigns to the Party of the Second Part all moneys and/or credits which shall hereafter [30] become due him on account of his logging operations from the Lorenz Lumber Company at Spalding, Idaho, and the J. Herbert Bate Company at Wallowa, Oregon, or either of them, and also any other person, firm or corporation; and Party of the First Part further assigns, transfers and sets over unto Party of the Second Part any moneys which are now due and/or which shall hereafter become due while this assignment is in effect from the sale of any of the timber assets of Party of the First Part, which are listed in Exhibit C, which is annexed hereto.

III.

The Party of the First Part agrees that Party of the Second Part may cause a copy of this assignment to be recorded in any county or counties in which timber owned wholly or in part by the Party of the First Part is located and the same shall constitute a first lien upon said timber and should said timber be sold or transferred by Party of the First Part, the Party of the Second Part shall be entitled to all of the proceeds of said sale, which shall be applied by said Party of the Second Part as hereinafter provided.

Nothing herein shall be construed to prohibit Party of the First Part from logging said timber now owned by him or any timber hereafter acquired, so long as said logs shall be delivered to a

mill or mills from which said Party of the Second Part receives all moneys due to Party of the First Part for logging operations hereinabove referred to.

IV.

The Party of the First Part agrees that this assignment shall cover any timber hereafter acquired by Party of the First Part until such time as said assignment is terminated as hereinafter provided.

V.

All moneys due at the time of the execution of this assignment and to become due hereafter from any logging operations of the Party of the First Part shall be paid directly to the Trustee for disposition as is hereinafter provided. Party of the Second Part shall keep proper accounts of all transactions taking place under the terms of this assignment and shall meet with the Creditors Committee herein provided for at such time or times as may be necessary and convenient for the parties. The compensation of Second Party for his services rendered hereunder shall be fixed by the Creditors Committee and shall be paid once a month during the time that this assignment is in full force and effect.

VI.

The parties agreeing to this assignment recognize that prior hereto Party of the First Part has made an assignment of his income at the rate of \$2.00 per thousand feet of logs which are delivered to the Lorenz Lumber Mill at Spalding, Idaho, and

J. Herbert Bate Lumber Company, Troy and Wallowa, Oregon, to the Nez Perce Tractor and Equipment Company, Lewiston, Idaho, which moneys are applied in payment of purchase money liens of said Nez Perce Tractor and Equipment Company against Caterpillar Tractors used by Party of the First Part in his logging operations. The parties hereto agree that this assignment shall in no way affect the payments now or hereafter to be made directly by the Lorenz Lumber Company or the J. Herbert Bate Lumber Company to Nez Perce Tractor & Equipment Company at the rate of \$2.00 per thousand feet of logs as the same are delivered by Party of the First Part.

VII.

Upon receipt, Party of the Second Part, out of the moneys and credits hereby assigned, shall from time to time make disbursement in the following order, [32] subject to such changes as may be deemed necessary from time to time by the Creditors Committee:

A. Payment to labor and haulers and loaders from and after November 1, 1954, and current payroll taxes commencing October 1, 1954, and workmen's compensation premiums earned after November 1, 1954.

B. U. S. Government, in payment of tax lien and sums due on Second Quarter 1954 Withholding and Social Security taxes at the rate of \$1,290.17 per month, commencing one month from date hereof;

C. Current operating bills, including rental of equipment, fuel, necessary logging supplies and repairs of equipment;

D. Fees of Party of Second Part, Trustee under this assignment, and expenses of administration of the Trust.

E. Employment Security Agency, Boise, Idaho, payment of lien for unemployment compensation at the rate of \$100.00 per month, commencing one month from the date hereof;

F. Living expenses for Party of the First Part at the rate of \$500.00 per month, commencing one month after date hereof;

G. C.I.T. Corporation, First Security Bank of Idaho, N.A., Lewiston, Idaho, Spokane Kenworth and Spokane & Eastern Branch of the Seattle First National Bank, and other contracts on equipment, where the same will not be paid at the rate of \$2.00 per thousand under a prior assignment;

H. Lorenz Lumber Company upon secured items at the rate of \$1.25 per thousand feet, out of all moneys received by Party of the Second Part for logs hauled and delivered by Party of the First Part;

I. Life insurance premiums on policies hereinafter referred to;

J. The sum of \$200.00 per month child support under a decree of the Superior Court of the State of Washington, in and for the County of Asotin;

K. Unsecured creditors, pro-rata.

VIII.

All parties recognize that any secured creditors who enter into this arrangement for payment do so without waiving their security; and should said pool terminate without full payment having been made to said secured creditors, then and in that event said secured creditors may look to the security given by Party of the First Part for satisfaction of any balance owing to them. [33]

IX.

The Party of the First Part has the following policies of life insurance, to-wit:

Policy Number, Name, and Amount

1937383 — The Maccabees, Detroit, Michigan — \$3,000.00,

1852251 — Sun Life Assurance Co. of Canada — \$2,000.00,

1952847 — Sun Life Assurance Co. of Canada — \$5,000.00,

1710519 — Sun Life Assurance Co. of Canada — \$1,000.00,

1919863 — Sun Life Assurance Co. of Canada — \$3,000.00,

1755413 — Sun Life Assurance Co. of Canada — \$1,000.00,

1861701 — Sun Life Assurance Co. of Canada — \$10,000.00,

1861700 — Sun Life Assurance Co. of Canada — \$10,000.00,

OW-00N503872-47M—Mutual Benefit H&A Assn., Omaha—\$2,500.00,

PPA10029503-52M—Mutual Benefit H&A Assn., Omaha—\$5,000.00.

That the said party of the First Part, at the time of executing this assignment, has prepared the necessary documents to have Party of the Second Part herein made his beneficiary for the benefit of the creditors joining in this assignment in the event of his death; and Party of the First Part shall immediately deliver said policies of life insurance to Party of the Second Part for forwarding to the Home Offices of the companies issuing said policies so that appropriate endorsements may be attached thereto showing Party of the Second Part as beneficiary under the terms of said policies.

X.

In order to assist Party of the Second Part in carrying out this assignment, it is hereby provided that there shall be a Creditors Committee to assist in the management of the affairs of Party of the First Part as follows: J. J. Church, H. M. Emerson and C. D. Ough. In the event that one of the committee shall resign or for some other reason be unable to act, the remaining two may appoint some person to act in his place. It shall be the duty of the Creditors Committee to meet with Party of the Second Part when necessary and to construe this agreement and its construction thereof; and the decision of said Committee shall be final and conclusive. It may supply any defect or omission or may reconcile any inconsistency herein in such man-

ner or to such extent as it shall be necessary to carry out the same properly and effectively. It is intended hereby to confer upon the Committee any and all powers that it may deem necessary or [34] expedient to carry out the purposes of this agreement and the Committee may exercise any and every such power as will fully and effectively carry out this assignment as if the same were herein specifically enumerated.

Neither the Trustee nor the Committee, nor any of the members thereof, nor any depository holding funds which shall come to Party of the Second Part under this assignment assumes, nor shall assume, any personal responsibility or liability for acting under or for the execution of this agreement, or any part thereof, or for the results of any steps taken or acts done for the purposes thereof.

XI.

The Party of the First Part does hereby agree that this assignment shall constitute a Power of Attorney to Party of the Second Part to act in his behalf insofar as it may be required to carry out his duties under the terms of this assignment, and to that end may do any and all acts, matters and things necessary to carry into effect the true intent and meaning of these premises. Party of the First Part hereby covenants and agrees with Party of the Second Part that from time to time, and at all times when requested, to give Party of the Second Part all information respecting the assigned property or his income, and to further execute and de-

liver all necessary instruments which it will be essential for Party of the Second Part to have in order to carry into full effect the true intent and meaning of this assignment.

XII.

For the further security of the creditors participating in this plan, Party of the First Part agrees that should it become necessary to sell any of the property hereunder which is now owned by him or in which he has an equity, he will agree to and join with the Party of the Second Part in said sale, if ordered by a vote of the majority of the Creditors Committee. [35]

XIII.

For the further security of the creditors participating in this plan, Party of the First Part agrees to and does hereby mortgage and pledge to the Trustee all his interest and equity in all his assets listed in, but not limited to, the exhibits attached hereto and in all property hereafter acquired. Should this assignment terminate before full payment has been made hereunder, or should Party of the First Part cease operations or in any way violate this assignment, Party of the Second Part may then foreclose upon any property set out herein belonging to Party of the First Part, or upon any property which Party of the First Part shall hereafter acquire so long as this assignment is in full force and effect. Should it be necessary for the creditors participating in this plan to foreclose, as herein provided, said proceedings shall be brought

in the manner provided for by law for the foreclosure of mortgages.

XIV.

The Party of the First Part agrees that this assignment shall constitute a mortgage upon all of the property listed herein.

XV.

Nothing herein shall be construed, nor shall prohibit, Party of the First Part and Trustee from selling property upon such terms and conditions as they may be able to agree.

XVI.

This assignment shall remain in full force and effect until such time as all of the debts of Party of the First Part set out herein have been paid by the Trustee. This assignment shall be irrevocable by Party of the First Part [36] and he further agrees that during said period he will not make any other voluntary general assignments for the benefit of creditors.

This assignment may further be terminated:

A. When in the judgment of the Creditors Committee it would be useless to further continue said assignment in full force and effect; and,

B. Whenever Party of the First Part shall cease logging operations, and no payments are made to Party of the Second Part for a period of thirty (30) days. This provision shall not apply where weather conditions have prevented Party of the First Part from continuing his logging operations.

C. If bankruptcy proceedings be instituted against Party of the First Part.

XVII.

The creditors consenting to this assignment agree that they will not institute any legal actions against Party of the First Part for the collection of their accounts during the term of this assignment, except and unless bankruptcy proceedings, or other insolvency proceedings, are instituted against or by Party of the First Part, making this assignment no longer effective, or should this assignment be for any reason declared judicially invalid; in any of such cases this stipulation against legal actions shall be of no further force and effect.

XVIII.

Party of the First Part owes debts aggregating the total sum of \$994.10, each of which accounts are \$100.00 or less in amount, said debts being set out in Exhibit D, which is attached hereto. It is agreed between the parties hereto that Party of the First Part may pay off said accounts outside of this assignment by procuring a loan from his relatives or such other person as may advance sufficient moneys to pay these small obligations. It is agreed that these obligations are being left out of this assignment to [37] ease the work of Party of the Second Part and the Creditors Committee provided for herein.

XIX.

The Party of the First Part agrees not to incur any further indebtedness except such indebtedness as may be actually necessary for the operation of his logging business, and in no case to exceed the sum of \$1,000.00 without the consent of the Committee. Party of the First Part further agrees not to purchase any property except such small tools and other equipment as are immediately necessary for his logging operations without the consent of the committee.

XX.

This agreement shall be executed by Party of the First Part and by Party of the Second Part; and when the first division of funds is made, a copy shall be sent to each creditor receiving a dividend, along with said first payment. Creditors accepting said first payment are notified that by accepting the benefits of this agreement, they are binding themselves thereto and agree to conform with the terms of said agreement so long as the same remains in full force and effect.

In Witness Whereof, the parties have set their hands and seals on this 16th day of November, 1954, at Lewiston, Idaho.

/s/ ROBERT F. WEYEN,
Party of the First Part.

/s/ RALPH B. DEFENBACH,
Party of the Second Part. [38]

State of Idaho,
County of Nez Perce—ss.

On this 16th day of November, in the year of 1954, before me, Doris I. Barber, a Notary Public in and for the State of Idaho, personally appeared Robert F. Weyen, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal the day and the year in this Certificate first hereinabove written.

[Seal] /s/ DORIS I. BARBER,
Notary Public in and for the State of Idaho, resid-
ing at Lewiston therein. [39]

EXHIBIT A

Accounts Payable

General Tire & Retreading Company, Lewiston,
Idaho: \$4,833.73.

Evergreen Garage, Lewiston, Idaho: \$1,815.64.

Lipps Insurance Agency, Lewiston, Idaho: \$1,464.06.

Union Oil Company: \$1,183.74.

Everett Roberts, Lewiston, Idaho: \$3,210.00.

Emmett Leeper, Estate: \$629.20.

Paul C. Keeton, Lewiston, Idaho: \$1,922.00.

Owen L. Knowlton, attorney for D. V. Garner: \$383.60.

Credit Adjustment Agency, Lewiston, Idaho (in-

cludes Standard Oil, Oud Hdwe and Perkins Ph):
\$1,204.35.

Samuel F. Swayne, Orofino, Idaho: \$890.60.

Claude Adams, rental: \$1,675.59.

Mrs. J. W. Henderson, rental of equipment:
\$906.80.

Jim Roberts, Lewiston, Idaho, Note: \$3,000.00.

J. D. Jacobs Company, Lewiston, Idaho: \$145.19.

State of Washington, fuel tax, Olympia, Wash-
ington: \$107.41.

General Petroleum, credit card purchases: \$648.80.

Employment Security Agency, Boise, Idaho, con-
tributions: \$3,086.59.

Idaho CleTrac Sales, Lewiston, Idaho: \$276.37.

Clearwater County Auditor's Office, Orofino:
\$464.60.

General Petroleum Co., bulk plant, Lewiston,
Idaho: \$2,207.55.

Erb Hardware, Lewiston, Idaho: \$918.95.

Mobil plant, Mike Hedler, Kendrick, Idaho: \$1,-
197.16.

Nick's Welding, Lewiston, Idaho: \$189.79.

Van R. Jones, Lewiston, Idaho, hauling equip-
ment: \$2,092.28.

Whipp's Stell and Welding Works, Lewiston,
Idaho: \$1,527.78.

Zirbel Truck Lines, Lewiston, Idaho: \$307.95.

Employers Mutuals of Wassau, Wisconsin: \$1,-
755.31.

Wasem's Furniture, Clarkston, open account:
\$324.70.

Veltex Credit Card: \$520.43.

Ed Stanfill, attorney, Clarkston, Washington:
\$500.00.

Nez Perce Tractor Co., Lewiston, Idaho, open account: \$4,352.31.

U. S. Government, Trespass: \$400.00.

Ed Deobald, Garage, Kendrick, Idaho: \$436.43.

Department of Labor & Industries, Olympia,
comp premiums:

First Security Bank, Lewiston, Idaho, repair agreement, truck: \$450.00.

State of Washington, Colfax, use tax: \$854.00.

Camas Oil, Lewiston, Idaho: \$1,001.63.

Gray-Webb Truck Services, Inc.: \$180.77.

Gray-Webb, rent on Carry-All truck: \$375.00.

Elfrieda May, Los Angeles, California, Notes:
\$6,581.10.

American Machine Works, open account: \$1,550.00. (Note: Subject to adjustment which will amount to approximately \$700.00.)

Sheriff's Office, Wallowa County, Oregon, taxes and interest: \$1,250.05.

County of Asotin, Washington, real property taxes: \$1,278.22.

McMonigle Chevrolet Co., Lewiston, Idaho, open account: \$258.20.

Potlatch Forests, Inc., Kamiah, Idaho (disputed):
\$4,611.22.

Potlatch Forests, Inc., Lewiston, Advances:
\$763.01.

Stumpage:

Tom Long, Kendrick, Idaho: \$500.00.

Rogers & Greer, approximately: \$300.00.

Frank Bogner, Nez Perce: \$225.00.

Esther Anderson, Clarkston, Washington: \$2,-500.00.

Ralph Stucker: \$400.00.

Byron Horton, assigned to John Speckard, Grande Ronde: \$450.00.

Carmen Patterson, tractor rental: \$873.00. [42]

EXHIBIT B

Secured Obligations

Director of Office of Internal Revenue, withholding and social security taxes, under a federal tax lien, approx: \$30,964.06.

Chat Mtg to Lorenz Lbr Co, which includes 1953 GMC Pickup, 1954 GMC Pickup, 1952 Fruehauf Traler and equity in D7 and D8.

Real Mortgage to Lorenz Lbr Co on 160 A at Greer: \$16,000.00.

CSC of Lorenz Lbr Co, including 1951 D7: \$10,-200.00.

CSC of Ch Mtg of Nez Perce Tractor Co., Lewiston, Idaho: 1952 D7, \$3,400.00; Dozer Attachment, \$239.75; 1952 D8 2U18439SP, \$6,948.05; 1953 D8 2U21777, \$15,886.00; 1954 D8 13A1160SP, \$21,-440.25; 1954 Arch, \$4,000.00; 1954 Tooth, \$250.00—\$52,164.05.

Ch Mtg to First Security Bank, Lewiston, on 1954 Buick: \$2,095.00.

Universal CIT, Portland, Oregon: 1953 A-C Tractor, \$11,747.97; Dozer Attachment, \$1,713.95—\$13,461.92.

Ch Mtg to Spokane Kenworth Co., 1954 Kenworth Truck: \$13,061.08.

To Spokane & Eastern Br of Seattle 1st Nat'l, repair plan of Spokane Kenworth Co. on 1954 Kenworth Truck, a second lien: \$2,933.40.

EXHIBIT C-1

Equipment

An equity in the following described machinery, to-wit:

- 1953 GMC Pickup Truck
- 1954 GMC Pickup Truck
- 1952 Fruehauf Trailer
- 1951 D7
- 1952 D7
- Dozer attachment
- 1952 D8 2U18439SP
- 1953 D8 2U21777
- 1954 D8 13A1160SP
- 1954 Arch
- 1954 Tooth
- 1953 A-C Tractor
- Dozer attachment
- 1954 Kenworth Truck
- 1954 Buick automobile

EXHIBIT C-2

Real Property

Equities in the following described timber, to-wit:

Dunlap place, Clearwater County Idaho: West

Half of the Southwest Quarter ($W\frac{1}{2}$ $SW\frac{1}{4}$) and the Southwest Quarter of the Northwest Quarter ($SW\frac{1}{4}$ $NW\frac{1}{4}$) of Section Two (2), Township Forty (40) North, Range Four (4), E.B.M.

Keen Place, Shoshone County, Idaho: Northeast Quarter of the Northeast Quarter ($NE\frac{1}{4}$ $NE\frac{1}{4}$) of Section Thirty-five (35), Township Forty-three (43) North of Range One (1), East of the Boise Meridian in Shoshone County, Idaho.

Near Greer, Idaho:

In Lewis County, Idaho: The North Half of the Southeast Quarter ($N\frac{1}{2}$ $SE\frac{1}{4}$), the Southeast Quarter of the Southeast Quarter ($SE\frac{1}{4}$ $SE\frac{1}{4}$), North Half of the Southwest Quarter of the Southeast Quarter ($N\frac{1}{2}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$), the Southeast Quarter of the Southwest Quarter of the Southeast Quarter ($SE\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$), and $E\frac{1}{2}$ $SW\frac{1}{4}$ $SW\frac{1}{4}$ $SE\frac{1}{4}$, Sec. 12, Twp. 34 N, R 2 EBM.

In Trinity County, California:

Division 1: Lot 7 of Section 9 in Township 3 South of Range 6 East, H.M. Lots 5, 6, 14, 19, 20, 21 and 22 of Section 10 in Township 3 South of Range 6 East, H.M.

Division 2: Parcel 1: The South half of the Northeast Quarter; the West Half of the Southeast Quarter of Section 9, in Township 3 South of Range 6 East, H.M. Parcel 2: The East half of the Southeast quarter of Section 9 in Township 3 South of Range 6 East, H.M.; the North half of the Southwest quarter of Section 10 in Township 3 South of Range 6 East H.M. Parcel 3: The Northeast quarter of the Northeast quarter of Section 17 in Town-

ship 3 South of Range 6 East, H.M.; the North half of the Northwest Quarter of Section 16 in Township 3 South of Range 6 East, H.M. Parcel 4: The Southeast quarter of the Southwest quarter of Section 10 in Township 3 South of Range 6 East, H.M.; the North half of the Northeast quarter of Section 15 in Township 3 South of Range 6 East, H.M.; the Northeast quarter of the Northwest quarter of Section 15 in Township 3 South of Range 6 East, H.M. Excepting Therefrom the following: Beginning at a black oak tree, 26 inches in diameter, scribed "B.M." being a Bench Mark tree on the survey of the Pauls Point-Mad River Road, near the Zenia Store in Section 15, Township 3 South, Range 6 East, H.M., and running thence Variation 20° East North 75° East 78 feet to a fir tree 4 inches in diameter scribed "X" the point of beginning, thence North 13° East 274.5 feet to a live oak tree 26 inches in diameter scribed X; thence North 85° West 132 feet W; thence South 13° West 274.5 feet; thence South 85° East 132 feet to the place of beginning, being situated in the East half of the Northwest quarter of Section 15, Township 3 South of Range 6 East, H.M. And Further Excepting Therefrom the following: One acre of land in the Southwest corner of the Northeast quarter of the Northwest quarter of Section 15 in Township 3 South of Range 6 East, H.M. Beginning at the Southwest corner running 16 rods East; thence 10 rods North, thence 16 rods West and 10 rods South to the Point of Beginning.

Division 3: The East one-half of the Southwest

quarter of Section 5, Township 3 South, Range 6 East, Humboldt Meridian.

Division 4: South Half of the Southeast Quarter of Section 8 and West Half of the Southwest Quarter of Section 9, both in Township 3 South, Range 6 East H.M.

Division 5: Lots 11 and 26 of Section 10 in Township 3 South of Range 6 East of Humboldt Meridian. [46]

EXHIBIT D

Accounts Under \$100.01

Willetts, Lewiston, Idaho: \$70.50.

Stokes & Radar, Attorneys at Arcata, California: \$36.47.

Cummins Diesel Sales, Inc., Spokane, Washington: \$19.25.

Henderson Motors, Lewiston, Idaho: \$38.51.

Vails, Lewiston, Idaho: \$7.47.

Haynes Equipment, Orofino, Idaho: \$30.60.

Lewiston Fur Shop, Lewiston, Idaho: \$47.70.

Harry Lutes, equipment rental: \$100.00.

Theodore H. Little, attorney at Clarkston, Washington, legal: \$99.97.

Morrell Construction Company, Lewiston, Idaho: \$71.00.

Mobil Dealer, Deary, Idaho: \$59.44.

Ralph Defenbach, Lewiston, Idaho: \$100.00.

Lewiston Cleaning Works, Lewiston, Idaho: \$5.25.

State of Idaho, Dept. of Highways, Lewiston: \$39.00.

Camas Oil Company, Orofino, Idaho: \$38.12.

C. Orno Shoemaker, Attorney at Clarkston, Washington: \$40.00.

Gray-Webb Buick, Lewiston, Idaho, open account: \$90.82.

Wallace-Frazier Title Company, Inc., Clarkston, Wash., Policy: \$100.00. [47]

[Endorsed]: Filed August 12, 1955.

[Title of District Court and Cause.]

ANSWER TO CROSS CLAIM OF E. J. STANFILL, AS TRUSTEE, AS GUARDIAN, AND AS EXECUTOR OF THE ESTATE OF ROBERT FRANCIS WEYEN, DECEASED

Comes now Ralph B. Defenbach, and for his answer to the Cross-Claim of E. J. Stanfill as Trustee, and as guardian of the estates of Daryl Weyen and Carolyn Weyen, minors, and as executor of the estate of Robert Francis Weyen, deceased, admits and denies as follows:

I.

Admits the allegations of Paragraph I of the Answer and Cross-Claim.

II.

Admits that E. J. Stanfill was designated as acting trustee for the minors Daryl Weyen and Carolyn Weyen, under and by virtue of a certain

Trust Agreement dated September 23, 1953, and that the same was recorded in Asotin County, Washington, on June 24, 1954, in Book 2 of Miscellaneous at Page 407, and further admits that Exhibit B is a copy of said trust agreement; but denies each and every other allegation contained [48] in Paragraph II of said Counter Claim.

III.

Referring to Paragraph III of said Cross-Claim, this answering defendant admits that E. J. Stanfill was at one time designated as beneficiary of certain policies listed in plaintiff's Complaint, but denies each and every other allegation contained in said paragraph.

IV.

Referring to Paragraphs IV, V, VI, VII, VIII, IX and X of said Cross-Claim, denies each and every allegation contained in said paragraphs, and the whole thereof.

Wherefore, this defendant prays that the Court deny any and all relief under said Cross-Claim as prayed for in said cross-claim and that the Court grant this answering defendant the relief prayed for in his Answer, which has heretofore been filed with the Court; and that he be granted such other and further necessary relief as he may be entitled to upon a hearing.

Dated this 29th day of August, 1955.

/s/ PAUL C. KEETON

R. MAX ETTER and ELLSWORTH

I. CONNELLY

/s/ By R. MAX ETTER

Attorneys for Ralph B. Defenbach,

Trustee

[49]

[Endorsed]: Filed Aug. 30, 1955.

[Title of District Court and Cause.]

ANSWER

Answering plaintiff's complaint, defendant El-frieda May, admits, denies and alleges:

I.

Admits all the allegations of said complaint and each count thereof excepting as follows:

1. Denies that said insurance policies or any thereof were legally or equitably assigned to Ralph B. Defenbach as trustee for creditors on November 24, 1954, or at any other time or that said Defenbach ever became the beneficiary thereunder as referred to in plaintiff's Second, Third and Fourth Counts.

2. Denies that E. J. Stanfill executed any assignments or conveyances as trustee.

3. Alleges that E. J. Stanfill was appointed guardian of the estates of said minors since plaintiff's complaint was prepared and is now acting as such.

For her Cross-Complaint herein, this defendant, Elfrieda May, alleges:

First Count

I. By reference defendant incorporates herein and realleges all of the allegations of paragraphs one to nine inclusive of plaintiff's First Count, except that this defendant alleges that E. J. Stanfill is now the guardian of [51] the estates of said minor children.

II. That shortly prior to September, 1953, said Robert Weyen, and Mary P. Weyen, husband and wife, the parents of Daryl Weyen and Carolyn Weyen, minors, (approximately six and eight years of age) entered into a property settlement and family support agreement for the disposition of all their property, present and inchoate and all rights therein and for the protection of each of them and for the protection of said minor children during their minority, under which it was agreed that Robert F. Weyen would pay \$200.00 per month for the support of said minors during their minority, and in order to protect them in the event of his death, that Mary P. Weyen would release all her claim as beneficiary and owner in all of the policies in the Second Count of the plaintiff's complaint in order that said minor children could be named irrevocable beneficiaries thereunder for their protection in the event of their father's death; that about August 19th, a written agreement was entered into accordingly under which said Robert F. Weyen and Mary P. Weyen agreed "that they will execute any

and all instruments necessary to carry out this agreement and the intent of the parties herein expressed", copy of which said agreement is now on file in Civil Cause No. 7456 of the Superior Court of Asotin County, Washington and is hereby referred to and made a part hereof.

III. That as part of the same transaction and agreement aforesaid and to protect said children and to carry out said understanding and agreement, said Robert F. Weyen filed Civil Cause No. 7456 in the Superior Court of Asotin County, Washington, for a divorce from Mary P. Weyen, and on September 22, 1953, the parties caused the above mentioned agreement to be presented to and considered by the presiding judge of said court and led said court to believe that said children were fully protected by the agreement of their parents, and said court relying thereon made and caused to be entered therein a decree of divorce and judgment approving said property settlement and its provisions for the protection of said children, which said judgment has never been modified or satisfied and is hereby referred to and made a part hereof.

IV. That further evidencing said agreement and the intent of the said parties to protect said children, Mary P. Weyen released all claim to the [52] policies listed in plaintiff's Second Count, both as beneficiary and co-owner and Robert F. Weyen on the following day—September 23, 1953—duly executed and E. J. Stanfill as trustee accepted, a voluntary, complete and irrevocable trust agreement for fifteen years, to E. J. Stanfill as trustee in fa-

vor of said minor children in which said Robert F. Weyen conveyed all of said policies named in plaintiff's First, Second, Third and Fourth Counts and all rights therein as beneficiary to the said E. J. Stanfill as trustee with directions for the application of the proceeds of said policies in the event of the death of said insured, Robert F. Weyen, reserving to the donor only the right to pledge the policies as collateral and to exercise any loan rights thereunder and with no reservation whatever of the right to change the beneficiary in any of the said policies.

V. That in further evidence of said agreement and for the further protection of said children, the said Robert F. Weyen thereafter caused said trust agreement, naming E. J. Stanfill trustee, as beneficiary in all of said policies, to be filed for record with the County Auditor of Asotin County, Washington, and the same was officially recorded in Book E of Miscellaneous Records, Page 407 thereof and is still of record and has never been changed, modified, rescinded or released of record.

VI. That in furtherance of said agreement for the protection of said children and evidencing his intent to carry out the same, the said Robert F. Weyen on the same date, namely September 23, 1953, duly executed his Last Will and Testament in which he recited that said minor children were his beneficiaries under insurance policies and protected accordingly, and that he left them no other property for such reason.

VII. Said trust agreement with E. J. Stanfill

was and is irrevocable until September 23, 1968 by its own terms, and E. J. Stanfill as such trustee is entitled to the proceeds of all policies involved herein in order to carry out the terms of said trust agreement for the benefit of said minor children.

Second Count

I. Defendant realleges all the allegations of paragraphs I to VII inclusive, of her First Count above stated. [53]

II. That the purported assignment from Robert F. Weyen to Ralph B. Defenbach as trustee for creditors, dated November 24, 1954, was and is without consideration and ambiguous, illegal, null and void and is inequitable and in fraud of said rights of said minor children of Robert F. Weyen for the following reasons:

A. Said creditors of Robert F. Weyen and said Defenbach as trustee thereof on and prior to November 24, 1954, had actual knowledge that Robert F. Weyen had conveyed all of said policies in trust to E. J. Stanfill and had made said Stanfill as such trustee, the beneficiary therein.

B. Said creditors of Robert F. Weyen and the said Defenbach as trustee on November 24, 1954, had constructive knowledge that said trust agreement with E. J. Stanfill was a complete, voluntary and irrevocable trust for the benefit of said minor children until September 23, 1968, and that said minor children were the beneficiaries under said trust and that said Robert F. Weyen did not in said trust agreement reserve or retain the right to

change said beneficiaries from E. J. Stanfill, trustee to any other person.

C. Said creditors of Robert F. Weyen and said Defenbach, as trustee, on November 24, 1954, had constructive knowledge that the Superior Court of Asotin County, Washington, had approved of the provisions by the parents of said minor children for the protection of said children in said decree and judgment of September 22, 1953, in said Civil Cause No. 7456 of said Court and did not reveal the Defenbach agreement to said Court nor any judge thereof, nor request the Court to modify said judgment, nor approve of said purported assignment, as it might affect the rights of said children, which had become vested.

D. This defendant is informed and believes that E. J. Stanfill did not by any consent to said Defenbach assignment, intend to change the said trust agreement of September 23, 1953, excepting to substitute Ralph B. Defenbach for E. J. Stanfill as trustee therein; and said E. J. Stanfill did not sign any instruments in connection therewith as "trustee" but only signed as an individual for such reason.

E. Said purported agreement to Ralph B. Defenbach provides, "The party of the first part does hereby agree that this assignment shall constitute a power of attorney to the party of the second part to act in his behalf."

F. Said purported assignment to Ralph B. Defenbach provides, "The party of the first part agrees that this assignment shall constitute a mortgage

upon all the property listed herein" and listed in said agreement are all the life insurance policies involved in this action, excepting that in Count One of plaintiff's Complaint.

G. Said purported agreement with Ralph B. Defenbach is clearly only an operating or managerial agreement.

Third Count

I. This defendant has paid many premiums upon the policies involved herein [54] on behalf of said insured, Robert F. Weyen, for the sole purpose of, and with the definite agreement and understanding between them, that the beneficial rights of said minor children would be preserved under said policies, and that they would remain the beneficiaries thereunder, and in reliance upon such understanding. That the creditors of Robert F. Weyen, represented by Ralph B. Defenbach, trustee, have paid none of such premiums and no other consideration for any rights as beneficiaries, but on the contrary have received the benefit of the funds borrowed on said policies, and it would now be unconscionable to deprive said minor children of said protection and said rights and a fraud against this defendant to have said trust and confidence held for naught.

Wherefore, this defendant prays:

1. That the court award all the funds involved herein or paid into court by plaintiff, less any attorneys' fees allowed to plaintiff, to defendant E. J. Stanfill, as trustee for the benefit of said minors,

Daryl Weyen and Carolyn Weyen, under said trust agreement of September 23, 1953, and/or to E. J. Stanfill as Guardian of the estates of said minors, and that Ralph B. Defenbach, as trustee, and Mary P. Weyen, individually, or as guardian, take nothing herein.

2. That if this Court should allow Ralph B. Defenbach an equitable division of the proceeds of said policies and should not allow all of the same to said trustee and guardian of the estate of said minors, that this court then allow this defendant a reasonable amount for payment of premiums on such policies and her expenses incurred herein for costs and attorney's fees, in preserving said assets and said benefits of said policies and keeping them in force for the benefit of those found to be entitled thereto.

3. That this defendant have judgment against defendant Ralph B. Defenbach for her costs incurred herein and for such other and further relief as to the court may seem just and proper.

/s/ C. C. ROWAN,

Attorney for Defendant,

Elfrieda May.

[55]

Affidavit of Service attached. [56]

[Endorsed]: Filed Aug. 15, 1955.

[Title of District Court and Cause.]

OPINION OF THE COURT

Driver, District Judge.

This is an interpleader action in which the plaintiff, Sun Life Assurance Company of Canada, a corporation, has deposited in the registry of the court the net proceeds of eight insurance policies on the life of Robert F. Weyen, who died on April 16, 1955. Several rival claimants to such proceeds have been impleaded as defendants.

There is little dispute as to the facts which, for the most part, are established by documentary evidence. On September 22, 1953, the insured, Robert F. Weyen, a resident of Asotin county, Washington, secured a decree of divorce in the superior court of that county from his wife, Mary P. Weyen. The mother was awarded the custody of the two minor children of the parties, Daryl Weyen and Carolyn Weyen. The father was required to pay \$200.00 a month for their support during their minority, and the insurance policies in suit, in accordance with the property settlement agreement entered into between the parties, were awarded to the insured, Robert F. Weyen. On the next day following the entry of the divorce decree, Robert F. Weyen executed a trust agreement or declaration of trust, in which he named his attorney, defendant E. J. Stanfill, as trustee, and stated that he had designated the trustee as beneficiary in ten life in-

surance policies.¹ The policies constituted the corpus of the trust. The trust was to continue for a period of fifteen years, and the beneficiaries were the two minor children of Robert F. Weyen. The trust instrument provided that in case of the death of Robert F. Weyen during the trust period, the trustee should collect the proceeds of the life insurance policies and use them for the education, maintenance, and support of the minor children. The trust agreement contained the following provision:

“The donor specifically reserves the right, during the term of this trust, to pledge any of such policies as collateral or to exercise the loan rights as provided in said policies, and in the event the donor makes application for such loans, it is hereby expressly understood that the signature of the Trustee named herein shall not be required to join in the application for said loans.” [192]

On the same day, September 23, 1953, Robert P. Weyen executed a last will and testament in which he stated that he had made no provisions for his minor children because “I have heretofore provided for them through Insurance Policies on my life; however, should said policies lapse or become null and void I hereby give, and devise and bequeath to my said children the sum of \$10,000.00 share and share alike.”

On November 16, 1954, Robert F. Weyen exe-

¹ Seven of the policies are involved in the present action. Three were issued by insurance companies other than the plaintiff.

cuted an assignment to a trustee for benefit of his creditors. In that document he stated he was in financial difficulties and unable to pay his debts, and that he assigned all his property, assets and income to defendant, Ralph B. Defenbach, as trustee for his creditors. Certain real property and a number of items of personal property were particularly described in the assignment, including all but one of the life insurance policies which are the subject of the present action.²

The paragraph of the assignment in which the life insurance policies were listed recited that Robert F. Weyen, the assignor, had prepared the necessary documents to have Ralph B. Defenbach made his beneficiary for the benefit of creditors "joining in this assignment" in the event of his death, and the assignor undertook immediately to deliver the policies to Defenbach for forwarding "to the home offices of the companies issuing said

² One insurance policy, No. 1,447,698, in the amount of \$2,000.00, listed in the trust agreement, was not included in the assignment for the benefit of creditors. Previously, on October 7, 1954, it had been assigned to Robert F. Weyen's mother, Elfrieda May. One policy, in the amount of \$6,000.00, listed in the assignment, is apparently listed under the wrong policy number in the trust agreement. Another policy in the amount of \$10,000.00 was issued to Robert F. Weyen on December 16, 1953, subsequent to the trust agreement, but the agreement evidently was intended to apply to it as the beneficiary named therein is "E. J. Stanfill, as trustee under Trust Agreement dated the nineteenth day of October, 1953." [Sic.]

policies so that appropriate endorsements may be attached thereto" showing Defenbach as beneficiary thereunder.³ The instrument further stated that "this assignment shall constitute a mortgage upon all of the property listed herein." [193]

The question presented for determination is whether the defendant, E. J. Stanfill as trustee in the trust agreement of September 23, 1953, or defendant, Ralph B. Defenbach as trustee in the assignment for benefit of creditors of November 16, 1954, is entitled to the proceeds of the life insurance policies which are listed in and covered by both instruments. Defendant Stanfill argues that the trust agreement of September 23, 1953, set up an irrevocable trust whereby the trust settlor, Robert F. Weyen, divested himself of the right to change the beneficiary, and created in the trustee for the benefit of his minor children a vested right in the proceeds of the insurance policies, which constituted the corpus of the trust. The donor, Weyen, could not thereafter without the consent of his children, it is argued, make defendant Defenbach as trustee for his creditors, the beneficiary under the policies. The record not only shows no such consent on their part but, since they were minors, they were incapable of giving effective consent.

³ The assignment also recited that as further security for the participating creditors, the assignor, Robert F. Weyen, "agrees to and does hereby mortgage and pledge to the trustee all his interest and equity in all his assets * * *" (Emphasis supplied.)

It seems to me that it is not necessary to decide whether the trust agreement set up an irrevocable trust so far as the right to change the beneficiary is concerned. By its plain terms, the document specifically reserved a right in the donor Weyen to exercise the loan rights as provided in the policies and "to pledge any of such policies as collateral."⁴ There can be no doubt as to what Weyen intended by the language just quoted. The trust agreement was drafted by a lawyer, and in legal parlance "pledging as collateral" means putting up property as security for a debt additional to the personal obligation of the debtor. Pledging for collateral provides concurrent additional security for the payment of the debt, whether it is antecedent or newly created.⁵

By his trust agreement and last will, Robert F. Weyen clearly indicated that he desired to make provision for the support [194] of his minor children in case of his death. But he was a comparatively young man—only thirty-five years of age at the time he executed the agreement—and it may be assumed that he was in ordinary good health as the record shows that he procured life insurance in the amount of \$10,000.00 on December 16, 1953,—only a year and four months prior to his death. He died as

⁴ Change of beneficiary to Defenbach was never effected in the manner provided in the policies.

⁵ See 7A Words and Phrases 227; *Third Nat. Bank vs. Hall* (Tenn.), 209 S.W.2d 46, 50; *Ex Parte Boddie* (S. Car.), 21 S.E.2d 4, 7; *McCormick vs. Falls City Bank*, (7 Cir.), 57 Fed. 107, 110.

the result of an accident, and not from disease. It may be assumed that he had every expectation of living through the fifteen-year period of the trust. The trust, to say the least, was a very thin one, depending for its fruition on a number of contingencies. The children could not have benefited from it unless the father died during the period of the trust, the children survived him, and prior to his death he had not permitted the policies to lapse for failure to pay the premiums. Weyen was a large-scale logging contractor, which is not generally regarded as one of the more stable forms of business activity, and he was burdened by the divorce decree requirement that he pay two hundred dollars a month for the support of his two children. When he set up the life insurance trust for his children, obviously he wished to reserve his life insurance as a useful credit resource.⁶ When he got into serious

⁶ In *Massachusetts Mutual Life Insurance Company vs. Bank of California*, 187 Wash. 565, 570, the Washington State Supreme Court said:

“In these modern, complex times, the right of every man to use his accumulations to pay his debts, especially when he has pledged them to obtain liquid capital, ought not to be limited or abridged, except only in those instances where, by his own act, he has barred his own right of control by creating an irrevocable vested interest in another or others. Life insurance, during the life of the insured, forms a reserve to be drawn upon in times of stress, and many have improved their fortunes and bettered the condition of their dependents by drawing liquid capital from that source to enable them to maintain or renew their business activities.”

financial difficulties in November of 1954, Weyen took advantage of the reservation he had made in his declaration of trust and, in effect, pledged the life insurance policies as collateral security for the payment of his debts. It was not necessary for him to change the beneficiary in order to accomplish that purpose. Indeed, if he had gone through all the forms of [195] changing the beneficiary, or had undertaken to make a complete and unconditional assignment of his life insurance, it would have been regarded in legal effect as an assignment, or pledging for security, as that plainly appeared to be the intention of the parties. There can be no doubt from consideration of the entire instrument of assignment for creditors that, Weyen did not intend to make defendant Defenbach, his trustee, the unconditional beneficiary of his life insurance, or to convey unconditionally to such trustee all of his property, but intended, rather, to pledge his assets, including his life insurance, as security for the payment of his debts.

It is a well-established, general rule that, if the parties so provide, a pledge of a life insurance policy can be made to secure all existing indebtedness of the assignor to the assignee.⁷ When a policy of life insurance has been pledged or assigned as se-

⁷ *National Bank of Kentucky vs. Gallagher* (Ky.), 49 S.W.2d 1006, and *Johnson vs. Johnson* (Ky.), 178 S.W.2d 983; 45 C.J.S. 41, Sec. 419; and *Couch on Insurance* (1930 Ed.), Vol. 6, Sec. 1458u, p. 5257. Also see, *Couch Cyclopedia of Insurance Law* (1945 Cumulative Supp.), Vol. II, pp. 1821-1822.

curity for the payment of a debt, upon the death of the insured the pledgee or assignee is entitled to so much of the proceeds of the insurance policies as may be necessary to pay the debt.⁸

Since jurisdiction in the instant case is based upon diversity of citizenship of the parties, the governing substantive law is that of the state of Washington. No case has been brought to my attention, however, which indicates that Washington does not follow the general rules as stated above. Indeed, in *Massachusetts Mutual Life Insurance Co. v. Bank of California*, 187 Wash. 565, the Washington State Supreme Court held that, when a life insurance policy by its language, recognizes the right of the insured to assign it, and when the insured may change the beneficiary, one to [196] whom it has been assigned as security for a debt will be held to have a prior right to so much of the

⁸ *Detroit Life Insurance Company vs. Linsenmier* (Mich.), 217 N.W. 919; *Minnesota Mutual Life Ins. Co. vs. Manthei* (Mo.), 189 S.W.2d 144; and *Morrow vs. National Life Ass'n of De Moines, Iowa* (Mo.), 168 S.W. 881. The great weight of authority is to the effect that where a life insurance policy reserves to the insured the right to change the beneficiary and is such that the insured has the right to assign the same, he may make such assignment without the consent of the beneficiary designated in the policy and without complying with the provisions of the policy prescribing the manner of changing the beneficiary, and upon the death of the insured, the assignee is entitled to the proceeds of the policy to the extent of his interest, as against the beneficiary. 135 A.L.R. 1040-1041.

proceeds as may be required to discharge the debt secured.

In the instant case, as I have pointed out, it is immaterial whether the trust agreement deprived the insured, Robert F. Weyen, of the right to change the beneficiary for the reason that, specifically, in the agreement itself, he reserved the right to pledge the insurance policies as collateral security for the payment of his debts.

At the time of his death, the total amount of Weyen's debts covered by his assignment for the benefit of his creditors greatly exceeded the total net proceeds of his life insurance policies. The defendant, Ralph B. Defenbach, therefore, will recover the net proceeds of the life insurance policies impleaded herein except policy number 1,447,698 assigned to Elfrieda May, and mentioned above in footnote 2, after deducting the plaintiff's costs and attorney fee as determined by the court. Defendant, E. J. Stanfill as trustee for Daryl Weyen and Carolyn Weyen, will recover like net proceeds of policy number 1,447,698. It appeared at the trial that the defendant Elfrieda May was not contesting the proceeds of such policy so far as the interests of the minor children were concerned. At any rate, it is doubtful, to say the least, that the policy could validly be assigned by Robert F. Weyen except by way of pledge as collateral security, and I recall no evidence in the record that it was held by Elfrieda May for security for any indebtedness owing to her by the deceased, Robert F. Weyen. None of the de-

feudants will recover any costs against any other defendant, nor against the plaintiff.

/s/ SAM M. DRIVER,

United States District Judge.

[Endorsed]: Filed Dec. 15, 1955.

[197]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause coming on duly and regularly for trial on Tuesday, the 18th day of October, 1955, at ten o'clock a.m., in the court rooms of the above entitled court at Spokane, Washington, before the Honorable Sam M. Driver, judge of the above entitled court, the plaintiff was represented by the law firm of Graves, Kizer, Greenough & Gaiser of Spokane, Washington; and the defendant Mary P. Weyen, individually and as guardian of Daryl Weyen and Carolyn Weyen, minors, was represented by S. Dean Arnold of Clarkston, Washington; the defendant Elfrieda May was represented by C. C. Rowan of Spokane, Washington; the defendant Ralph B. Defenbach as trustee was represented by Paul C. Keeton of Lewiston, Idaho, and R. Max Etter of Spokane, Washington; and the defendant E. J. Stanfill as trustee and E. J. Stanfill as executor of the estate of Robert Francis Weyen, deceased, was represented by S. Dean Arnold of Clarkston, Washington. All of the attorneys for the

respective parties were present in court; and Elfrieda May, Ralph B. [198] Defenbach and E. J. Stanfill appeared personally.

All parties having announced their readiness to proceed with the trial, the Court heard testimony of witnesses called by both the plaintiff and the defendants and examined documentary evidence presented by the parties, and having heard oral arguments by the attorneys for the defendants at the conclusion of the trial and they having been allowed sufficient time for the submission of briefs by all parties, and the Court having been fully advised in the premises now makes it

Findings of Fact

The Court finds:

I.

That this Court has jurisdiction of said cause and all of the parties thereto on account of Sec. 2361 of the United States Code which provides for interpleading causes of action, one of which is cases involving life insurance policies as in the case at bar; that in accordance with the interpleader statute, the plaintiff Sun Life Assurance Company of Canada, a corporation, has deposited in the registry of the court the net proceeds of eight life insurance policies on the life of Robert F. Weyen, who died accidentally on April 16, 1955; the defendants, being rival claimants to the proceeds of the policies, they have been impleaded as defendants.

II.

That the policies interpleaded in this action by the Sun Life Assurance Company of Canada, a corporation, plaintiff, are as follows: No. 1,447,698; No. 1,852,251, No. 1,952,847; No. 1,710,519; No. 1,919,863; No. 1,755,413; No. 1,861,701 and No. 1,861,700.

III.

That on September 22, 1953, Robert F. Weyen was a resident of Asotin County, state of Washington, and secured a decree of divorce in the Superior Court of that county from his wife, Mary P. Weyen; that Mary P. Weyen was awarded custody of the two minor children of the parties, namely, Daryl Weyen and Carolyn Weyen. That as a part of the divorce proceedings, Robert F. Weyen was required to pay Two Hundred (\$200.00) Dollars per month for the support of said minor children during their minority; and the insurance policies in suit, in accordance with the Property Settlement Agreement entered into between the parties, were awarded to the insured, Robert F. Weyen.

IV.

That on September 23, 1953, Robert F. Weyen executed a trust agreement, or declaration of trust, in which he named his attorney, the defendant E. J. Stanfill, as trustee, and stated that he had designated the trustee as beneficiary of ten life insurance policies, seven of which policies are involved in the present action, three being issued by insurance companies other than the plaintiff. The policies consti-

tuted the corpus of the trust. The trust was to continue for a period of fifteen years and the beneficiaries were the two minor children of Robert F. Weyen. The trust agreement provided that in case of the death of Robert F. Weyen during the trust period, the trustee should collect the proceeds of the life insurance policies and use them for the education, maintenance and support of the minor children. The trust agreement contained the following provision:

"The donor specifically reserves the right, during the term of this trust, to pledge any of such policies as collateral or to exercise the loan rights as provided in said policies, and in the event the donor makes application for such loans, it is hereby expressly understood that the signature of the Trustee herein named shall not be required to join in the application for said loans." [200]

V.

That on September 23, 1953, Robert F. Weyen executed a Last Will and Testament, in which he stated that he had made no provision for his minor children because, "I have heretofore provided for them through insurance policies on my life; however, should said policies lapse or become null and void, I hereby give, and devise and bequeath to my said children the sum of \$10,000.00, share and share alike."

VI.

That prior to November 16, 1954, Robert F. Weyen had become involved in financial difficulties

and was unable to pay his debts; and that on November 16, 1954, he executed an assignment to Ralph B. Defenbach as trustee for the benefit of his creditors. In that document he assigned all his property, assets and income to Ralph B. Defenbach as trustee for his creditors. Certain real property and a number of items of personal property were particularly described in the assignment and said assignment included all *by* one of the life insurance policies which are the subject of the present action. The policies assigned to Ralph B. Defenbach as trustee are as follows:

1,852,251, Sun Life Assurance Co. of Canada,
\$2,000.00.

1,952,847, Sun Life Assurance Co. of Canada,
\$5,000.00.

1,710,519, Sun Life Assurance Co. of Canada,
\$1,000.00.

1,919,863, Sun Life Assurance Co. of Canada,
\$3,000.00.

1,755,413, Sun Life Assurance Co. of Canada,
\$1,000.00.

1,861,701, Sun Life Assurance Co. of Canada,
\$10,000.00.

1,861,700, Sun Life Assurance Co. of Canada,
\$10,000.00.

Pursuant to the assignment to the defendant Defenbach, the necessary documents were prepared and the assignor delivered the policies to Defenbach

for forwarding to the home offices of the companies issuing said policies so that appropriate endorsements might be attached thereto showing Defenbach as beneficiary thereunder. In this manner said policies were [201] pledged to defendant Ralph B. Defenbach as trustee for the creditors of Robert F. Weyen.

VII.

By its terms the Stanfill Trust specifically reserved a right to the donor, Robert F. Weyen, to exercise the loan rights as provided in the policies of insurance and "to pledge any of such policies as collateral;" that this trust agreement was drafted by a lawyer and the right to pledge as collateral reserved to the donor a means of putting up the policies as security for a debt additional to the personal obligation of the debtor. The right reserved to pledge the insurance policies as collateral applied to security for the payment of debts, whether they be antecedent or newly created.

VIII.

When Robert F. Weyen got into serious financial difficulties in November of 1954, he took advantage of the reservation he had made in his declaration of trust and did pledge the life insurance policies as collateral security for the payment of his debts. It was not necessary for him to change the beneficiary in order to accomplish that purpose; that in executing the Assignment to Trustee for Benefit of Creditors dated November 16, 1954, Robert F.

Weyen intended to pledge his assets including his life insurance as security for the payment of his debts.

IX.

That the Court finds that prior to the time of the execution of the Assignment to Trustee for Benefit of Creditors on November 16, 1954, Robert F. Weyen had assigned to the defendant Elfrieda May policy No. 1,447,698, to which policy no claim is made by the defendant Defenbach; [202] that during the trial of said cause, the defendant Elfrieda May did not contest the right of the minor children Daryl Weyen and Carolyn Weyen to the proceeds of said policy; that there is no evidence in the record that said policy was assigned to Elfrieda May for security for any indebtedness owed to her by the deceased; that the net proceeds of said policy should be awarded to E. J. Stanfill as trustee for Daryl Weyen and Carolyn Weyen.

X.

That the courts as a general rule have recognized the right of a plaintiff in interpleader actions to recover from the funds deposited in the registry of the court their costs and a reasonable attorney fee. The Court finds that in addition to their costs, the plaintiffs are entitled to a reasonable attorney fee in the amount of two percent of the total sum deposited by the plaintiff with the registry of the court.

Conclusions of Law

The Court concludes:

First: That the seven (7) insurance policies involved in this action and assigned to Ralph B. Defenbach by their language recognize the right of the insured to assign the same and that under the terms of the trust agreement dated September 23, 1953, Robert F. Weyen reserved the right to pledge any of such policies as collateral; that the defendant Ralph B. Defenbach therefore will recover the net proceeds of all life insurance policies impleaded herein except Policy No. 1,477,698, which was assigned to Elfrieda May.

Second: That the defendant Elfrieda May having not contested the proceeds of Policy No. 1,447,698 insofar as the interests of said minor [203] children were concerned, the defendant E. J. Stanfill as trustee for Daryl Weyen and Carolyn Weyen, minors, will recover the net proceeds on said policy.

Third: None of the defendants will recover any costs against any other defendant or the plaintiff.

Fourth: That the plaintiff having impleaded said policies and having deposited with the registry of the court the net proceeds of said policies and in all ways having complied with their duties in interpleading in said cause, the action insofar as the plaintiff is concerned is dismissed.

Fifth: That the attorneys for the plaintiff are entitled to recover an attorney fee of two percent of the amount deposited with the registry of the

court, which fee is allowed together with plaintiff's court costs.

Dated at Spokane, Washington, on this 30th day of December, 1955.

/s/ SAM M. DRIVER,
United States District Judge

Presented by:

/s/ R. Max Etter

/s/ Paul C. Keeton,

Attorneys for Defendant Ralph B. Defen-
bach

Service of Copy Acknowledged. [204]

[Endorsed]: Filed December 30, 1955.

In the United States District Court for the Eastern
District of Washington, Northern Division

No. 1309

SUN LIFE ASSURANCE COMPANY OF CAN-
ADA, a corporation, Plaintiff,

vs.

MARY P. WEYEN, etc., et al., Defendants.

JUDGMENT

The above entitled cause having come on duly and regularly for trial before the Honorable Sam M. Driver, Judge of the above entitled court, for non-jury trial on Tuesday, the 18th day of October,

1955, at the court rooms of the above entitled court in Spokane, Washington, at ten o'clock a.m., the plaintiff being represented by the law firm of Graves, Kizer, Greenough & Gaiser of Spokane, Washington; and the defendant Mary P. Weyen, individually and as guardian of Daryl Weyen and Carolyn Weyen, minors, being represented by S. Dean Arnold of Clarkston, Washington; the defendant Elfrieda May being represented by C. C. Rowan of Spokane, Washington; the defendant Ralph B. Defenbach as trustee being represented by Paul C. Keeton of Lewiston, Idaho, and R. Max Etter of Spokane, Washington; and the defendant E. J. Stanfill as trustee and E. J. Stanfill as executor of the estate of Robert Francis Weyen, deceased, being represented [205] by S. Dean Arnold of Clarkston, Washington. All of the attorneys for the respective parties were present in court; and Elfrieda May, Ralph B. Defenbach and E. J. Stanfill appeared personally.

All parties having announced their readiness to proceed with the trial, the Court heard testimony of witnesses called on behalf of the plaintiff and the defendants and examined documentary evidence introduced by all parties; and the case having been submitted to the Court and Findings of Fact and Conclusions of Law having been entered, and having directed that judgment be entered in accordance therewith,

Now, Therefore, by reason of the law and the Findings aforesaid, It Is Ordered, Adjudged and Decreed as follows:

First: That Ralph B. Defenbach, trustee, have and recover the net proceeds of the following numbered policies, said proceedings having been deposited with the registry of the court, to-wit:

1,852,251, Sun Life Assurance Co. of Canada,
\$3,683.15.

1,952,847, Sun Life Assurance Co. of Canada,
\$9,767.30.

1,710,519, Sun Life Assurance Co. of Canada,
\$1,606.58.

1,919,863, Sun Life Assurance Co. of Canada,
\$5,746.87.

1,755,413, Sun Life Assurance Co. of Canada,
\$1,702.49.

1,861,701, Sun Life Assurance Co. of Canada,
\$19,603.42.

1,861,700, Sun Life Assurance Co. of Canada,
\$19,603.42.

Second: That E. J. Stanfill as trustee for Daryl Weyen and Carolyn Weyen, minors, recover the net proceeds of Policy No. 1,447,698, being \$1,831.20, and said proceeds having been deposited with the registry of the court by the plaintiff;

Third: That the action be, and the same is hereby dismissed insofar as the plaintiff is concerned.

Fourth: That the plaintiff have and recover from the moneys deposited with the registry of the court an attorney fee of two percent of [206] the total sums on deposit; and in addition thereto, that the plaintiff have and recover his court costs necessarily expended in said action.

Fifth: That the defendant Mary P. Weyen, in-

dividually and as guardian of Daryl Weyen and Carolyn Weyen, minors, take nothing.

Sixth: That none of the defendants shall recover any costs against any other defendant nor against the plaintiff.

Dated at Spokane, Washington, on this 30th day of December, 1955.

/s/ SAM M. DRIVER,

United States District Judge

Presented by:

/s/ R. Max Etter,

/s/ Paul C. Keeton,

Attorneys for Ralph B. Defenbach.

Service of Copy Acknowledged. [207]

[Endorsed]: Filed December 30, 1955.

[Title of District Court and Cause.]

ORDER DENYING MOTION TO AMEND
FINDINGS, CONCLUSIONS AND JUDG-
MENT

The above named defendant, E. J. Stanfill, as trustee, has presented to the Court and filed a motion to amend the findings, conclusions and judgment in the above cause. The defendant's reasons for asking such amendment, and the legal and factual theories on which his motion is based, were fully presented and argued to the court in the course of the trial, and the Court feels that he is

thoroughly acquainted therewith. The Court therefore considers it reasonable and proper that the motion be acted upon and denied without notice of hearing or oral argument, pursuant to the provisions of Rule 78, of the Rules of Civil Procedure for District Courts.

It Is Now Therefore Ordered that the motion of defendant, E. J. Stanfill, as trustee, to amend the findings, conclusions and judgment in the above entitled cause, is denied.

Done this 19th day of January, 1956.

/s/ SAM M. DRIVER,

U. S. District Judge [208]

[Endorsed]: Filed January 19, 1956.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: The above entitled Court and to Stanley Taylor, Clerk thereof and to Ralph B. Defenbach, as Trustee:

You are hereby notified that the defendants E. J. Stanfill, as trustee and Elfrieda May, above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit of the United States of America, from the Findings of Fact, Conclusions of Law and Judgment made and entered herein December 30, 1955, and all intervening orders therein and from

the Order Denying Defendants' Motion to Amend Findings, Conclusions and Judgment entered herein January 19, 1956 and from each and every and the whole thereof.

Dated this 15th day of February, 1956.

E. J. STANFILL

As Trustee and

ELFRIEDA MAY,

/s/ By S. DEAN ARNOLD,

/s/ C. C. ROWAN,

Their Attorneys

[209]

[Endorsed]: Filed February 15, 1955.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
THE APPELLANTS WILL RELY

To: The above entitled Court and to Stanley Taylor, Clerk thereof; to the Honorable United States Court of Appeals for the Ninth Circuit and to Appellee, Ralph B. Defenbach, as Trustee:

You and Each of You Are Hereby Notified that appellants E. J. Stanfill, as Trustee and Elfrieda May, intend to rely on the following points in their appeal of the above entitled action to the Ninth Circuit Court of Appeals:

I.

The Findings of Fact, Conclusions of Law and

Judgment are in conflict with and contrary to the evidence.

II.

The Stanfill Trust (Defendants Exhibit 25) was irrevocable for fifteen (15) years as to the beneficiary of the insurance policies conveyed by the insured.

III.

The minor children of the donor acquired a vested interest as beneficiaries of the policies when the Stanfill Trust (Defendants Exhibit No. 25) was executed and the policies delivered. [212]

IV.

No power of revocation is contained in the Stanfill Trust (Defendants' Exhibit No. 25).

V.

The only reservation by the donor in the Stanfill Trust (Defendants' Exhibit No. 25) was the right to borrow thereon, either by pledge, to secure the loan or exercise the loan rights thereon.

VI.

The reservation in the Stanfill Trust, (Defendants' Exhibit No. 25), being in the alternative, Weyen and his assignee, Defenbach, exercise their maximum rights as to four (4) policies (Plaintiffs Exhibit Nos. 5, 6, 7 and 8) by exercising the loan rights thereon with the company subsequent to the Defenbach assignment and could not exercise the additional right of pledge.

VII.

The recording of the Stanfill Trust (Defendants Exhibit No. 25) and the execution of decedent's Will (Defendants Exhibit No. 24) corroborate the intention of the donor to protect his minor children with insurance.

VIII.

The Defenbach Assignment (Defendants Exhibit No. 27) carries no greater interest in the policies than reserved to the donor of the trust; an Assignee for the benefit of creditors is not a bona fide purchaser for value.

IX.

The Defenbach Assignment (Defendants Exhibit No. 27) has never been construed, is ambiguous and conflicting within itself and could not pass interest to the creditors which the assignor did not have; the Defenbach Assignment was intended as an operating and managing agreement only and terminated with the death of Weyen. [213]

X.

The right to change beneficiaries, not having been reserved to the trustor, such change cannot be indirectly accomplished under the guise of assignment or pledge.

XI.

Elfrieda May, by and through Stanfill as Trustee and on behalf of the minor children, is entitled to the \$3,000.00 paid by her to secure the Defenbach agreement.

Dated this 15th day of February, 1956.

E. J. STANFILL

As Trustee and

ELFRIEDA MAY,

/s/ By C. C. ROWAN,

/s/ S. DEAN ARNOLD,

Attorneys for Appellants

Receipt of Copy attached. [214]

[Endorsed]: Filed February 15, 1956.

[Title of District Court and Cause.]

DESIGNATION OF RECORD

To: The above entitled Court and to Stanley Taylor, Clerk thereof and to Defendant Ralph B. Defenbach and his attorneys Paul C. Keeton and R. Max Etter:

You are hereby notified that the defendants E. J. Stanfill, as trustee, and Elfrieda May have appealed the above entitled action to the United States Court of Appeals for the Ninth Circuit and that said defendants so appealing hereby designate the following portions of the record, proceedings and evidence to be contained in the record on appeal, to-wit:

1. Plaintiff's Complaint.
2. Answer and Cross-Claim of E. J. Stanfill as Trustee.
3. Answer of Ralph B. Defenbach as Trustee.

4. Answer of Ralph B. Defenbach as trustee to Cross-Claim of E. J. Stanfill as trustee.

5. Answer of Elfrieda May.

6. Memorandum opinion of the trial court.

7. Findings of Fact, Conclusions of Law and Judgment.

8. Order Denying Motion to Amend Findings, Conclusions and Judgment.

9. Transcript of all evidence furnished by Court Reporter.

10. Notice of Appeal.

All exhibits to be filed in said Circuit Court as such.

Dated this 15th day of February, 1956.

E. J. STANFILL

As Trustee, and

ELFRIEDA MAY,

/s/ By S. DEAN ARNOLD,

/s/ C. C. ROWAN,

Their Attorneys

Acknowledgment of Service attached. [215]

[Endorsed]: Filed February 15, 1956.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Eastern District of Washington—ss.

I, Stanley D. Taylor, Clerk of the United States District Court for the Eastern District of Washington, do hereby certify that the documents annexed hereto are the original documents filed in the above entitled cause, to-wit:

Complaint.

Answer and Cross Claim—E. J. Stanfill as Trustee.

Answer—Mary P. Weyen.

Answer—Ralph B. Defenbach, as Trustee.

Answer—Ralph B. Defenbach to Cross Claim of E. J. Stanfill.

Answer—Elfrieda May.

Court Reporter's Record of Proceedings at Trial.

Exhibits—(Enclosed herewith but not attached hereto):

Plaintiff's

1. Policy No. 1447698, \$1,000.00.
2. Policy No. 1710519, \$1,000.00.
3. Policy No. 1755413, \$1,000.00.
4. Policy No. 1852251, \$2,000.00.
5. Policy No. 1861700, \$10,000.00.
6. Policy No. 1861701, \$10,000.00.
7. Policy No. 1919863, \$3,000.00.

8. Policy No. 1952847, \$5,000.00.
9. Policy Loan Agreements.
10. Claimant's Statements and correspondence.
11. File of assignments, correspondence, etc.
12. Letter 11/30/53 Weyen to Sun Life.
13. Letter 5/21/55 Defenbach to White.
14. Policy record card 1447698.
15. Policy record card 1710519.
16. Policy record card 1755413.
17. Policy record card 1852251.
18. Policy record card 1861700.
19. Policy record card 1861701.
20. Policy record card 1919863.
21. Policy record card 1952847.
22. Group of checks.

Defendant Stanfill's

23. Decree of Divorce.
24. Copy of Will.
25. Copy of Trust Agreement.
26. Letters of Guardianship.

Defendant Defenbach's: 27. Agreement for benefit of creditors.

Defendant Stanfill's: 28. Letter 1/13/55 Sun Life to Keeton.

Opinion of the Court.

Findings of Fact and Conclusions of Law.

Judgment.

Order denying motion to amend Findings, Conclusions and Judgment.

Notice of Appeal.

Notice of Bond.

Clerk's Certificate as to Bond on Appeal.

Statement of Points on which the Appellants will rely.

Designation of Record and that the same constitute the record for hearing of the appeal from the judgment of the United States District Court for the Eastern District of Washington, in the United States Court of Appeals for the Ninth Circuit, as set forth in the Appellant's Designation of Record.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at Spokane in said District, this 15th day of March, A. D. 1956.

[Seal] /s/ STANLEY D. TAYLOR,

Clerk, U. S. District Court, Eastern
District of Washington

In the United States District Court for the Eastern
District of Washington, Northern Division

Civil No. 1309

SUN LIFE ASSURANCE COMPANY OF CAN-
ADA, a corporation, Plaintiff,

VS.

MARY P. WEYEN, etc., et al., Defendants.

TRANSCRIPT OF PROCEEDINGS

Appearances: Joseph W. Greenough, of Graves, Kizer, Greenough & Gaiser, for the Plaintiff. R. Max Etter, of R. Max Etter and Ellsworth I. Connelly, and Paul C. Keeton for the Defendant, Ralph B. Defenbach, Trustee. C. C. Rowan for the defendant, Elfrieda May. S. Dean Arnold, for the defendants Mary P. Weyen and E. J. Stanfill in their respective capacities. [59]

Be It Remembered that the above-entitled cause came on before the Honorable Sam M. Driver, Judge of the above-entitled Court, at Spokane, Washington, on October 18, 1955, at 10 o'clock a.m. for trial, whereupon the following proceedings were had:

The Court: Are you ready, gentlemen, in Sun Life Assurance Company of Canada against Mary P. Weyen and others?

Mr. Greenough: Plaintiff is ready, your Honor.

The Court: As the Clerk has suggested here, a number of parties are represented by different at-

torneys. I wonder if it wouldn't be a good way to start here for each of you to announce whom you represent, and so that the reporter may get a record of it, we might start with the Sun Life Assurance Company. That is Mr. Greenough, I presume.

Mr. Greenough: Yes, represented by Graves, Kizer, Greenough & Gaiser, J. W. Greenough, counsel.

The Court: I wish to say, Mr. Greenough, before it escapes my attention, that I wish to compliment you on almost your unique example you have set here of properly denominating your various claims as "counts" instead of "causes of action."

Mr. Greenough: I think I can give the credit right back to your Honor because when I was arguing the Williamson v. Otis Elevator case against Max Etter, who happens to be in this case, your Honor observed that there was no such thing as a cause of action under the new Federal rules of pleadings, so [60] I have been forever cured by that of the bad habit of calling them causes of action. From now on, they are going to be counts as the forms in the rule book and the rules themselves say.

The Court: You represent the Sun Life Assurance Company?

Mr. Greenough: Yes, your Honor.

The Court: All right. Now, let's see, Mary P. Weyen, is she represented here?

Mr. Arnold: Your Honor, I am S. Dean Arnold of Clarkston. Mary P. Weyen was made a guardian and since that time she has resigned as guardian of

the estate of the children. Mr. E. J. Stanfill has been substituted as such and has appeared accordingly here, and I represent Mr. Stanfill in his capacity as trustee, as guardian, and as the executor of the estate of the deceased.

The Court: I see, all right.

Elfrieda May, is she represented?

Mr. Rowan: Elfrieda May, she was a creditor and was the mother of the deceased, grandmother of the children, and was named in several of the policies and paid premiums upon some. I represent her.

The Court: And Ralph B. Defenbach?

Mr. Etter: He is represented, your Honor, by Mr. Paul Keeton of the Idaho bar, and by me. [61]

The Court: And then E. J. Stanfill, as trustee and executor of the estate of Robert Francis Weyen?

Mr. Arnold: Yes.

The Court: You represent him, that's right, I remember. All right, then, do you gentlemen wish to make opening statements here to begin with? It might be helpful, it is hard to determine from the file just what the conflicting claims are, and I think we might be able to straighten it out a little by some opening statement.

Mr. Greenough: I think I might add to the speeding of the proceedings here by just a few remarks, your Honor.

Of course, the plaintiff here is just a stakeholder and is entirely impartial as between the claimants. The amount tendered into court here, as your

Honor may have observed, is \$63,544.43. That amount was tendered in to the Clerk at the time the complaint was filed and the summons were issued. At that time, also, your Honor signed, at the request of the plaintiff, a temporary restraining order restraining the various claimants from instituting or maintaining actions against the insurance company pending the decision of this Court upon the hearing of this interpleader action.

The prayer of the complaint is, of course, that the proper parties to receive the fund in question be determined by the Court, and that the amounts be paid to the proper [62] parties; that out of the fund in court, however, the costs of this action incurred by the plaintiff necessarily in doing its part to make it possible to solve the disputes between the parties be returned to the plaintiff, and that also out of the fund the plaintiff be allowed such sums as are determined by your Honor to be reasonable for the plaintiff's attorney fees in the action.

The other prayer of the complaint is that upon the entry of the final decision in this interpleader action, the temporary restraining order be made permanent against all parties, including, of course, the successful party, because the judgment has already been paid, in effect.

The Court: I don't remember now, is there any statutory provision for attorney fees in an interpleader action?

Mr. Greenough: On that subject, anticipating possibly some question about it, we have prepared a

brief and memorandum of authorities and that has been served upon all counsel.

The Court: I see, all right.

Mr. Greenough: It doesn't purport to contain all the cases at all. There are hundreds of them.

I also in that connection have served just this morning or handed to counsel a list of the out-of-pocket expenses that we have incurred here, and I hand a list of that to your Honor. [63]

The Court: All right.

Mr. Greenough: Now, then, Mr. J. K. White, will you stand so the parties can identify you? Mr. White is the Branch Manager of the Spokane Branch Office of Sun Life Assurance Company of Canada. He is the head administrative man of the Sun Life Assurance Company's office in Spokane, and I might observe, your Honor, that the Spokane office was the office through which all of these policies involved were administered and handled during Mr. Weyen's life, so that the loans made and the premiums paid, and so on, all passed through the Spokane Branch Office and Mr. White has been Branch Secretary—I think I said manager; his title properly is Branch Secretary—he has been Branch Secretary of the Branch office for a long period and I think during all the time that any transactions under any of these policies occurred.

That is correct, is it not?

Mr. White: That is correct.

Mr. Greenough: Now, we have secured from the home office of the Sun Life Assurance Company in Montreal, Canada, originals of every document that

they have pertaining in any way to these policies or to the assignments, the loans, the changes of beneficiary, correspondence, anything relating to the subject before your Honor this morning. Mr. White has those with him here in court. We also have photostatic copies. Now, gentlemen, we just got those things through the mail and [64] Mr. White has been checking them this morning. He reports to me there are two items, of which we have photostatic copies, the originals of which he can't find in this envelope we just received from Montreal, but I am sure that we have them. If we don't, I think that perhaps the Court would let the photostatic copies in and subject to our later scurrying around and finding those two originals.

There is a great mass of documents, as your Honor will see when we get into the evidence, and it has been quite a chore to sort the things out and gather them.

Then, in addition to those materials from Montreal, Mr. White——

The Court: You say you have photostatic copies?

Mr. Greenough: We have originals of everything except two and I think we have originals of those, but if we don't have originals of those, we have photostatic copies.

The Court: Oh, I see. I was just going to say I suppose photostatic copies or some sort of copies could be substituted for the originals.

Mr. Greenough: Although we have no objection to these originals being marked as exhibits because

the Sun Life Assurance Company has no further need of them.

The Court: That's right, close the files as far as you are concerned.

Mr. Greenough: I anticipate when the judgment becomes [65] final and satisfied, the originals are going to be returned to us. There is no objection to that, is there, Max?

Mr. Etter: No.

Mr. Greenough: So for the time they will be in the possession of the Court, I think it would be speedier if we just let the originals go in.

The Court: Of course, it might not become final in this Court.

Mr. Greenough: That is true too, but that is all right with us.

Now, the other type of evidence that we have for the use of the Court and the parties here are the policy cards—is that the proper name for them, Mr. White?

Mr. White: Yes.

Mr. Greenough: Policy cards, which are maintained in the Spokane Branch Office covering these various policies. Now, those are the original records of the transactions which they show. Namely, they show the receipt of all premiums, they show the repayments of all loans, and we also have in court the originals of all checks of Sun Life Assurance Company by which loans were made on these policies. Those, of course, were endorsed by Mr. Weyen or other persons to whom the loan proceeds were paid in accordance with his request and cleared through

the bank and went back to the Sun Life Assurance Company. We have those. Now, I think that is the original [66] of everything that will have any bearing on the case. Mr. White, as I say, is here and I don't know how your Honor or counsel would like to proceed, but I can put him on the stand and have him identify all of these things right down the line, or we can simply let counsel go ahead and we will have them in court and if you want to look at any of these things, you can call on him then.

If the Court feels that it is proper and if counsel will agree, I would appreciate Mr. White's being called upon for any testimony that he might be needed for and then being excused. He is right here in Spokane and if he is wanted again, he can come back down here in ten or fifteen minutes, and I also would appreciate being excused myself, but I don't want to rush away from my duty and I am asking for an attorney fee here and I am willing to stay if it is necessary.

Mr. Etter: Your Honor, along with what Mr. Greenough says and the fact he would like to get away and Mr. White, too, I think it might be proper, if I understand properly, that is the way this will proceed, that all of these documents of Sun Life be identified and put in the evidence because I haven't seen some of them and I don't think other counsel have, and after they are put in evidence, we can have them here and if the Court wishes to suspend so we can all examine them, then we can expedite the trial. I don't know whether that was Mr. Greenough's plan. If that is so, I

think that is the proper [67] way to do it, and I certainly have no objection.

The Court: If there is no objection to it, I think an orderly way to proceed, Mr. Greenough, might be for you to put Mr. White on and show the amount of money that you have, under what documents it is submitted here as an interpleader, and then I see no reason why he couldn't be excused subject to calling him back if he is needed.

Mr. Greenough: We have only one list of some of these. Would it be permissible if I stand by the witness up there?

The Court: Oh, yes, you may do that.

J. K. WHITE,

called and sworn as a witness on behalf of the plaintiff, was examined and testified as follows:

Direct Examination

Q. (By Mr. Greenough): You are J. K. White?

A. Yes.

Q. What is your residence, Mr. White?

A. 423 West 20th, Spokane.

Q. By whom are you employed?

A. Sun Life Assurance Company of Canada.

Q. That is the plaintiff in this interpleader action? A. That's right.

Q. In what capacity are you employed by that company, Mr. [68] White?

A. Branch Secretary of the local branch.

Q. The local branch, that is the Spokane branch? A. Spokane branch.

Q. Mr. White, you have read the complaint in

(Testimony of J. K. White.)

this action, have you? A. Yes.

Q. And you are familiar with the life insurance policies involved here? A. I am.

Q. Were all those life insurance policies administered through the Spokane Branch Office of Sun Life Assurance Company of Canada?

A. Yes.

Q. Have you been Branch Secretary of the Spokane branch during the entire policy life of each of the policies involved here?

A. No. There was one issued in 1934 that was prior to my time in Spokane. The others, yes.

Q. And the others, yes. Now, when you assumed your duties in Spokane, were the branch records as to that policy which had been issued prior to your coming to Spokane, turned over to you by your predecessor as a part of the records of the branch kept in the regular course of business by the company? [69] A. Yes.

Q. And has that record since been in your custody? A. Yes, sir.

Q. And the records of all the other policies, of course, have been in your custody and these cards, and so on, have been kept by the employees of the company under your immediate supervision?

A. That is right.

Q. Now, Mr. White, you have before you quite a stack of documents pertaining to the policies in suit here? A. Yes.

Mr. Greenough: I guess I'd better have these marked first. I guess I hadn't better take a chance

(Testimony of J. K. White.)

of referring to them until they have all been marked.

The Court: No, I think perhaps you should have the Clerk mark them in the sequence that you desire, in the order that you wish.

Mr. Greenough: Well, does your Honor want me to take time to arrange these policies in the order in which they appear in the separate counts? They are more or less hit and miss now, I think.

The Court: If you think it would help in keeping them straight.

Mr. Rowan: If it please the Court, couldn't we stipulate that they could be marked beginning with A or 1 in [70] accordance with the way they are numbered in the complaint?

Mr. Etter: Certainly we can.

Mr. Greenough: I can do that in just a second here, I think, your Honor.

All right, will you mark that as the first, please.

The Clerk: Plaintiff's 1 for identification.

Q. (By Mr. Greenough): I am handing you, Mr. White, Plaintiff's Exhibit for Identification No. 1 and I will ask you to describe that to the Court.

Mr. Greenough: Of course, your Honor, all of these are life insurance policies of Sun Life Assurance Company of Canada. I think that needn't be repeated each time.

The Court: No.

Q. (By Mr. Greenough): Mr. White, if you

(Testimony of J. K. White.)

will give the number of the policy, the serial number of the policy.

Mr. Greenough: And also, counsel and your Honor, can it be understood that all of the policies, of course, are issued to Robert Francis Weyen or Robert F. Weyen, as the case may be, and that he is one and the same person?

The Court: Yes, all right.

Mr. Greenough: And they all cover his life.

Q. I think that is all you have to say as to each policy, Mr. White, is to give the number of it.

A. Policy 1,447,698.

The Court: I wonder if you would have him give the [71] amount of the policy?

Q. (By Mr. Greenough): All right, the principal amount of that policy, Mr. White?

A. Is \$1,000.

The Court: All right.

Mr. Greenough: Your Honor and counsel, that is the policy which is involved in Count No. 1.

Mr. Rowan: May it please the Court and counsel, couldn't it be stipulated that they are all double indemnity policies?

The Witness: Yes.

Mr. Greenough: That may be stipulated.

The Court: All of them double indemnity.

Mr. Greenough: They all are, yes, your Honor.

The Clerk: That will be Plaintiff's 2 for identification.

Q. (By Mr. Greenough): Mr. White, referring you now to Plaintiff's Exhibit No. 2 for identifica-

(Testimony of J. K. White.)

tion, will you give the serial number and the principal amount of that policy?

A. Policy No. 1,710,519 for \$1,000.

Mr. Greenough: Will that be admitted, your Honor?

The Court: Yes, I am going to admit these policies and all these documents. If anybody has an objection, they can speak up. Otherwise, I will admit them as they are identified. [72] 1 and 2 are admitted.

(Whereupon, the said policies were admitted in evidence as Plaintiff's Exhibits 1 and 2.)

Q. (By Mr. Greenough): Plaintiff's Exhibit No. 3 for identification, Mr. White?

A. Policy 1,755,413 for \$1,000.

The Court: That will be admitted.

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 3.)

Q. (By Mr. Greenough): Plaintiff's Exhibit No. 4 for identification?

A. 1,852,251 for \$2,000.

The Court: It is admitted.

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 4.)

Q. (By Mr. Greenough): Plaintiff's Exhibit No. 5 for identification, Mr. White?

A. Policy 1,861,700 for \$10,000.

The Court: That will be admitted. [73]

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 5.)

(Testimony of J. K. White.)

Q. (By Mr. Greenough): And Plaintiff's Exhibit for identification No. 6?

A. 1,861,701 for \$10,000.

The Court: That will be admitted.

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 6.)

Mr. Greenough: Your Honor, Exhibits 2 through 6 are the policies incorporated in the second count.

The Court: And 1 is the first count?

Mr. Greenough: The policy No. 1,447,698 is the first count.

The Court: I see, all right.

Mr. Greenough: And then policies which are exhibits 2 through 6 are all in the second count.

The Court: All right.

Mr. Greenough: Now, your Honor has probably observed that although there are numerous policies, I only have five counts in the complaint. That is because certain policies have exactly the same history as to title. [74]

The Court: I see.

Mr. Greenough: And my conception, at least, as to the entitlement to the proceeds thereof, and I grouped those all into one count. That is the reason in the second count, for example, there are five policies.

The Court: I was just curious to know why so many policies were taken out. Was it over a period of years?

A. Over a period of years, yes, from '34 to '54.

The Court: Oh, I see.

(Testimony of J. K. White.)

The Clerk: I have marked Plaintiff's 7 for identification.

Q. (By Mr. Greenough): Can you identify Plaintiff's Exhibit for identification No. 7?

A. Policy 1,919,863 for \$3,000.

Mr. Greenough: Exhibit No. 7, your Honor, is the policy which is involved in the third count of the complaint.

The Court: What was the amount of that again?

Mr. Greenough: \$3,000.

The Clerk: \$3,000.

The Court: \$3,000. That will be admitted.

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 7.)

The Clerk: I have marked Plaintiff's Exhibit 8 for [75] identification.

Q. (By Mr. Greenough): Plaintiff's Exhibit for identification No. 8, Mr. White?

A. Policy 1,952,847 for \$5,000.

The Court: Admitted.

(Whereupon, the said policy was admitted in evidence as Plaintiff's Exhibit 8.)

Mr. Greenough: Exhibit No. 8 is the policy which is involved in the fourth count, your Honor, and that concludes the policies involved.

Now, I might observe, your Honor, that the total of the face amounts of those policies, of course, should be multiplied by two because of the double indemnity provision of each and then that total will

(Testimony of J. K. White.)

not equal the total which was tendered into court, will it?

A. No, from that is deducted the policy loans that were outstanding.

Q. At the time of the death? A. Yes.

Mr. Greenough: Now the manner in which the amount payable at the time of the death and at the time of the institution of this action upon each policy was computed and incorporated as Exhibit A to the complaint, so if your [76] Honor wishes to ascertain the exact computation of the amounts due under any particular policy and include it in the tender into court, your Honor will find that in Exhibit A to the complaint.

Q. Now, Mr. White——

The Court: Let's see, I intended to admit all of those, 1 to 8, inclusive, Mr. Taylor.

The Clerk: Yes.

The Court: May I make this inquiry, is there any question by any of the parties in interest here as to the amount that has been deposited? Is there any controversy between the claimants and the insurance company as to whether they have made a correct accounting here and a correct deposit of the balance due on these policies?

Mr. Etter: There is no controversy so far as the defendant Defenbach is concerned.

Mr. Arnold: We know of none.

Mr. Rowan: No.

The Court: I thought I might like to know that. All right, go ahead.

(Testimony of J. K. White.)

Mr. Greenough: Your Honor, I have here a sheaf, I would estimate it to be probably twelve or fifteen separate pages, which are the policy loan agreements pursuant to which loans were made at various times in various amounts on various ones of these policies, and I think it might be advisable, I [77] think it would be convenient, at least, to have those marked all as one exhibit.

Mr. Etter: No objection.

Mr. Arnold: No objection.

The Court: Yes, all right.

The Clerk: That will be Plaintiff's Exhibit 9 for identification.

The Court: It will be admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 9.)

Q. (By Mr. Greenough): Mr. White, you heard my statement to the Court and counsel as to the content of this Plaintiff's Exhibit for identification No. 9? A. Yes.

Q. Was that a correct statement?

A. That is correct.

Mr. Greenough: Now, your Honor and counsel, the next group of papers, again it is eight or ten pages I would guess, includes the claims or claimants' statements that were filed with the Sun Life Assurance Company of Canada by claimants' various claims, and also correspondence between various claimants or persons representing them and the Company after the death of the insured relating to entitlement to the proceeds [78] of various policies.

(Testimony of J. K. White.)

If there is no objection, I will mark that all as one exhibit.

Mr. Arnold: No.

The Clerk: It will be marked as Plaintiff's 10 for identification.

The Court: 10, that is?

The Clerk: Yes, sir.

Mr. Arnold: No objection.

Q. (By Mr. Greenough): Mr. White, you heard my statement to counsel and the Court as to the content of Plaintiff's Exhibit No. 10 for identification? A. That is correct.

Q. That was a correct statement, was it not?

A. That was correct.

The Clerk: Is that admitted, your Honor?

The Court: I haven't seen these documents, of course, and as I understand from somebody's statement here, that counsel probably haven't either. I suggest this procedure: As these are offered, and certainly some of these are admissible in evidence, some of them may not be—there may be letters in there that are hearsay or self-serving that might not strictly be admissible—but I suggest that I admit them. Then if anybody has any objection to any of them, I will reconsider and consider taking them out or striking them from the exhibit. Is that acceptable? [79]

Mr. Etter: Yes.

Mr. Rowan: Just so we have the right to object to them on the ground of materiality, that is all.

The Court: Yes, I will give you that opportunity

(Testimony of J. K. White.)

after you have examined them, but I think we ought to put them all in now, with the understanding that after you examine them, if you object to any of them, you can make your objection and then I will consider them on an individual basis.

Mr. Etter: That will be acceptable.

The Court: It will be admitted on that qualified basis, then, No. 10.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 10.)

Mr. Greenough: Well, now, your Honor, I have three groups of documents. They have been stapled into three groups. Mr. White tells me there is no significance to that, however, they could as well be stapled all into one bunch. They are all documents from the home office of Sun Life Assurance Company of Canada. They are assignments, copies of trust agreements, requests for changes of beneficiary, and correspondence relating to those subjects and kindred subjects. Some of the correspondence are originals received by Sun Life Assurance Company of Canada from various writers, and other [80] correspondence are copies of Sun Life's responses, and so on.

Now, these relate to all of the policies; that is, for example, there are some assignments that relate only to a single policy; other assignments relate to three or four policies. It would be impossible to separate these, in other words, into one group which related only to one policy. Subject to the ruling that your Honor made on Exhibit No. 10 as to objec-

(Testimony of J. K. White.)

tions for materiality, and so on, being reserved, I think it would be perfectly appropriate to offer these all as one exhibit.

The Court: Very well, you may offer it on that same basis then and they will be admitted as No. 11.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 11.)

Q. (By Mr. Greenough): Mr. White, you heard my statement to the Court and counsel describing the content of this combined Exhibit No. 11, I might call it, a sheaf of documents approximately half an inch thick. Did I in my statement to his Honor properly describe the content of that exhibit? A. You were correct.

The Clerk: I have marked Plaintiff's Exhibit 12 for identification. [81]

Q. Mr. White, inviting your attention to Plaintiff's Exhibit No. 12 for identification, will you describe that, please, just by the name of the addressee, the name of the writer, and the date?

A. This is a declaration signed by Robert Francis Weyen on the 30th day of November, 1953 referring to Policy 1,918,865.

Q. And addressed to?

A. The Sun Life in Montreal.

Mr. Greenough: Your Honor and counsel, this is a photostatic copy of one of the two documents which I stated earlier we had not been able to find among the originals sent to us from Montreal, but which obviously the company had and perhaps still has, although it may show up among this Exhibit

(Testimony of J. K. White.)

11 which has just been admitted, it may be in there, the original, but if it isn't, here is a photo-static copy of it which was sent to me from Montreal at the time the case was sent to me for filing. Now, it is not the original but it does bear upon this subject and it is a document which I think should be in the chain of title documents for consideration by your Honor and by counsel.

Mr. Etter: No objection, your Honor.

Mr. Rowan: No objection.

Mr. Arnold: No objection.

The Court: If there is no objection, it will be [82] admitted as Plaintiff's Exhibit 12.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit 12.)

The Clerk: I have marked Plaintiff's Exhibit 13 for identification.

Mr. Greenough: Now, Plaintiff's Exhibit No. 13 for identification, your Honor, is the second of those two documents.

Q. Will you explain what that is, Mr. White?

A. This is a letter dated May the 21st, 1955 from Ralph B. Defenbach, Trustee for R. F. Weyen, inquiring about when the claim would be paid.

Q. And that was addressed to J. K. White, Branch Secretary? A. Yes.

Mr. Greenough: I will offer 13 likewise.

Mr. Etter: No objection.

Mr. Rowan: With the same reservation.

The Court: Yes. It will be admitted, then, sub-

(Testimony of J. K. White.)

ject to the objections that may be made as to its materiality and admissibility otherwise.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit 13.) [83]

The Clerk: I have marked Plaintiff's Exhibit 14 for identification.

Q. (By Mr. Greenough): I am handing you Plaintiff's Exhibit 14 for identification, Mr. White. Will you describe it, please?

A. This is a policy record card for Policy 1,447,-698. It contains the entire history of the policy.

Q. And that policy record card is originally instituted and maintained where, Mr. White?

A. In the Spokane branch.

Q. And comes from your possession as Branch Secretary of the Spokane Branch?

A. That is correct.

Q. And that refers to what? You gave the number of the policy, didn't you?

A. Yes, I did.

Q. Now, there are two record cards in Exhibit for identification No. 14, Mr. White. I assume that is because the history of this one policy ran over the first card and you started the second card as a continuation of the first? A. That is correct.

Mr. Greenough: I will offer that, your Honor.

The Court: If there is no objection, it will be admitted, then, 14. [84]

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 14.)

(Testimony of J. K. White.)

The Clerk: The next one is marked Plaintiff's Exhibit 15, your Honor, for identification.

Q. (By Mr. Greenough): Plaintiff's Exhibit No. 15 for identification, Mr. White, is the same policy record card from the Spokane Branch Office relating to Policy No. 1,710,519? A. Correct.

Q. And again that constitutes two cards?

A. Yes.

Mr. Greenough: Offer Plaintiff's identification No. 15, your Honor.

The Court: It is admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 15.)

The Clerk: The next one will be 16, your Honor, and I am also marking 17, 18 and 19.

Q. (By Mr. Greenough): Now, Exhibit for identification No. 16, Mr. White, is the policy record card from your office covering Policy No. 1,755,413 and that constitutes [85] two cards?

A. Correct.

The Court: That will be admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 16.)

Q. (By Mr. Greenough): Mr. White, Exhibit for identification No. 17 is the office policy card covering Policy 1,852,251 and that constitutes two cards? A. Correct.

The Court: Admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 17.)

Q. (By Mr. Greenough): Plaintiff's Exhibit 18

(Testimony of J. K. White.)

for identification is the branch policy record card for Policy 1,861,700 and it consists of two cards?

A. Yes.

The Court: It is admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 18.)

Q. (By Mr. Greenough): Plaintiff's Exhibit for [86] identification No. 19 is the policy record card for Policy 1,861,701 and it consists of two cards?

A. Correct.

The Court: Admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 19.)

Mr. Greenough: If your Honor please, Exhibit No. 14 was the policy record card for the policy which is involved in count one; exhibits 15 through 19 are the policy record cards for the policies involved in count two.

The Clerk: Marking Plaintiff's Exhibits 20 and 21.

Q. (By Mr. Greenough): Plaintiff's Exhibit for identification No. 20, Mr. White, is the policy record card for Policy No. 1,919,863 consisting of two cards?

A. Correct.

The Court: Admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 20.)

Mr. Greenough: That exhibit for identification No. 20, your Honor, involves the policy which is the subject of count number three. [87]

The Court: All right.

(Testimony of J. K. White.)

Q. (By Mr. Greenough): And Exhibit for identification No. 21, Mr. White, is policy record card for Policy No. 1,952,847 and that is only one card?

A. That is correct.

Mr. Greenough: That Exhibit No. 21 for identification, your Honor, is the policy record card for the policy involved in the fourth count.

The Court: It will be admitted.

(Whereupon, the said document was admitted in evidence as Plaintiff's Exhibit 21.)

The Clerk: Plaintiff's 22 for identification.

Q. (By Mr. Greenough): Plaintiff's Exhibit for identification No. 22, Mr. White, is a group of checks drawn by the Sun Life Assurance Company of Canada all attached together as one exhibit. Will you describe to the Court what those checks represent, please?

A. These checks are drawn on the Spokane & Eastern Branch and represent payment of a policy loan as requested by the insured, in various amounts and for the various policies.

Q. Now, Mr. White, you say that those checks are drawn upon the Spokane & Eastern Branch. You mean the Spokane & [88] Eastern Branch of the Seattle First National Bank? A. Correct.

Q. Here in Spokane. And were those drawn by the Spokane Branch Office?

A. No, these were drawn by the Head Office.

Q. At Montreal? A. At Montreal.

Q. Pursuant to applications for advances or loans on policies made by Mr. Weyen?

(Testimony of J. K. White.)

A. That's right.

Q. During his lifetime. And the policy loans, the applications for advances were approved then by the appropriate officials at Montreal and these checks issued by Montreal?

A. That is correct.

Q. Now, were they mailed to Mr. Weyen directly or were they mailed to you?

A. Through our branch, yes. We record them first and then mail them. And the assignment amounts will appear on the loan agreements that have already been admitted as an exhibit.

Q. In other words, the amounts of these checks which constitute exhibit for identification No. 22 will appear upon Exhibits 14 through 21, which are the policy record cards for the various policies? [89]

A. That is correct.

The Court: 22 will be admitted.

Mr. Greenough: I will offer Exhibit for identification No. 22.

The Court: It will be admitted.

(Whereupon, the said documents were admitted in evidence as Plaintiff's Exhibit 22.)

Mr. Greenough: I think, your Honor, that constitutes the offering and introduction of all of the records of Sun Life Assurance Company of Canada which can possibly refer to this dispute. And now Mr. White is available if anybody wants to ask him any questions, of course.

The Court: I wonder, would counsel prefer to cross examine Mr. White now or wait until you

(Testimony of J. K. White.)

have an opportunity to examine these documents? It occurs to me that some question might arise when you are looking at the documents that you will want to ask him to explain, and if he is gone, why then we would have to call him back.

Mr. Etter: I think probably it will be necessary.

The Court: I suggest that I take a fifteen to twenty minute recess and I will just recess subject to call, and when you gentlemen get through looking at these documents, as soon as you can conveniently, let me know and I will come back [90] on the bench and we will resume.

I will just recess subject to call.

(Whereupon a short recess was taken.)

The Court: All right, Mr. White, take the stand.

The Witness: Thank you.

The Court: Now, let's see, I suggest that you cross examine in the order in which your clients' names appear on the caption here. That is one way to do it so we will be going in the same order each time.

Mr. Rowan: I believe, if the Court please, then Mrs. May would come first as long as Mary Weyen isn't——

The Court: Yes, all right.

Mr. Rowan: At this time, anyway, I hand the Court my memorandum of authorities.

The Court: Yes.

Mr. Rowan: And serve a copy upon counsel.

Cross Examination

Q. (By Mr. Rowan): Mr. White, the Sun Life

(Testimony of J. K. White.)

has a printed form which it uses for change of beneficiary, do they not? A. That's right.

Q. That form is printed on a green sheet?

A. Green or buff, depending on the policy issue.

Q. I see. I notice in Exhibit 11 you have a request for change of beneficiary signed by Robert Weyen to Stanfill [91] which is about the date of the Stanfill trust, September 23, 1953?

A. Yes.

Q. And I believe you have such a request for change of beneficiary from Mr. Weyen to Mr. Stanfill for all of the policies, have you not?

A. I believe so, yes.

Mr. Greenough: Your Honor, I have no doubt but what Mr. Rowan is reciting in his questions to the witness is correct, but if it is important that Mr. White verify these various facts, I think it might be well for him to examine the exhibits himself.

Mr. Rowan: Certainly.

Mr. Greenough: If you have it in mind, Mr. White, so you are positive of your answer without looking at the exhibit, of course, that is O.K.

Mr. Rowan: Thanks for calling it to my attention. I don't need the exhibit anyway.

The Court: If you feel you can answer from memory, that is quite all right, but if you need to consult a document——

A. I think it would be better.

Mr. Rowan: I am asking him so far as he knows, anyway, if the Court please.

(Testimony of J. K. White.)

Q. Did the company ever to your knowledge receive any such [92] request for change of beneficiary signed by Mr. Stanfill to anyone else after he was designated as trustee for the children?

A. No.

Q. Now, I believe in one of the exhibits I saw a letter from Mr. Weyen, the deceased, to the company stating it was his intention to change the beneficiary. Do you recall such a letter in one of the exhibits? A. Yes, November——

Q. In what exhibit?

A. November 30, 1954.

Q. In which exhibit is that? A. 11.

Q. Was that ever followed through by completion of change of beneficiary? A. No.

Mr. Rowan: That is all.

Cross Examination

Q. (By Mr. Etter): Mr. White, in examining Exhibit 1, you will note that a request for change of beneficiary is attached to the policy?

A. Yes, sir.

Q. In Exhibit No. 2, I note that there is not only a request for change of beneficiary, but likewise there is filed an [93] assignment for value?

A. Yes.

Q. And in No. 3, I find the same thing, request for change of beneficiary and likewise an assignment for value. Referring to 2 and 3, the request for change of beneficiary has been made by Mr. Weyen, change of beneficiary to Mr. E. J. Stanfill as trustee? A. That is right.

(Testimony of J. K. White.)

Q. Both of the assignments for value are assignments to Mr. Defenbach as trustee?

A. No, no, they are assignments in favor of Mr. Weyen.

Q. Oh, of Mr. Weyen.

The Court: I don't get that in favor——

Mr. Greenough: Completed by Mary Weyen.

A. Mary Weyen.

Mr. Etter: That is correct in 2 and 3, excuse me.

A. That's right.

Q. Now, in the other policies that are here, I note that in some of them or all of them, referring now to No. 4, I find no request for change of beneficiary or assignment in the policy? A. No.

Q. There is none there? A. No.

Q. Or in 5? [94] A. No.

Q. Or in 6? A. No.

Q. Or in 7? A. No.

Q. Or 8? A. That's right.

Q. Now, referring, however, to Exhibit No. 11, those requests or assignments are all present, are they not, in No. 11? A. They are.

Q. Can you tell me any reason in explanation of the fact that on some of these exhibits they are attached and others they are kept separate, as you have in Exhibit 11?

A. In the earlier policies, it was a requirement that the change of beneficiary be endorsed on the contract. In the later issues, that was not necessary.

Q. Has that any significance?

A. Not at all.

(Testimony of J. K. White.)

Q. Not at all. Does the fact that the assignments are not attached to the policies have any significance? A. No, not at all. That is customary.

Q. You said, I think, in answer to counsel's question, that there had not been a change of beneficiary other than the requested one with respect to Mr. Stanfill as trustee? [95]

A. That I would have to look at the exhibit to make certain. Are you referring to a change of beneficiary completed by Stanfill?

Q. Yes, other than that, was there any change of beneficiary ever indicated in any request from Mr. Stanfill? A. No.

Q. There was not?

A. There is nothing signed by Mr. Stanfill, or, at least——

Q. Can you tell me whether or not Mr. Stanfill, after he was made beneficiary, did make assignments of these policies?

A. I would have to refer to the exhibit to make certain. Yes, Mr. Stanfill and Mr. Weyen joined in naming Mr. Defenbach as trustee.

Q. In an assignment?

A. In an assignment for value.

Q. Which was filed?

A. Which was recorded by the company.

Q. Recorded by the company. What effect did the assignment for value, so far as your company was concerned, have, Mr. White, as to ownership of policies?

(Testimony of J. K. White.)

A. Well, I think that that would be a legal question that I am not qualified to answer.

Q. I see. But you filed the assignment, did you not? A. We recorded it, yes.

Q. Do you know whether or not as to Policy No. 1,447,698, [96] which was the policy I think assigned to Elfrieda May, do you know whether or not Mr. Stanfill made the assignment with respect to that policy, also?

A. I believe so. To be certain, I would have to refer to the exhibit.

Q. Would that be in 11, do you know?

A. Yes, yes.

Q. That is correct? A. That is correct.

Q. I see. That was as to 1,447,698 to Elfrieda May? A. That's right.

Q. That is after, of course, the creation of the so-called Stanfill trust? A. Yes.

Mr. Etter: That is all.

Cross Examination

Q. (By Mr. Arnold): Mr. White, referring you to Exhibit 8, you will note on the face thereof that it is payable to E. J. Stanfill as trustee under trust agreement dated the 19th of October, 1953.

Now, Mr. White, were you familiar with a document which was mentioned a moment ago as the so-called Stanfill trust? A. Yes. [97]

Q. Had you seen it? A. Yes.

Q. Do you recall the date of the instrument?

A. September the 23rd, I believe.

(Testimony of J. K. White.)

Q. Did you ever see a trust agreement dated the 19th of October, '53? A. No.

Q. Will you explain to the Court for the purpose of the record the discrepancy there and what subsequently happened relative to information sent to your office, if any?

A. We received a letter stating that the October 19th date was incorrect and that the correct date was September the 23rd.

Q. Do you know of your own knowledge whether that letter is incorporated in any of these exhibits?

A. I am not sure.

Q. Well, you do recall of your own knowledge that such a letter was received? A. Yes.

Q. And was it the company's intention to refer to that trust agreement of September 23rd in this policy?

A. If I could have the policy card for that policy, it would appear there.

Q. I think, Mr. White, that in Exhibit 11 we find the letter [98] to which you refer?

A. Yes.

Q. Now, Mr. White, handing you all of these policy cards, which are exhibits 14 to 21, inclusive, I will ask you to give some summary information that I will request, which I think you can give much easier than we can dig it out of those records and argue it later.

What was the status, if any, of loans on the several policies involved in this litigation on Septem-

(Testimony of J. K. White.)

ber 23, 1953, the date of the Stanfill trust? That is, were the policies encumbered on that date?

A. 1,447,698 on that date had a loan of \$400.53; Policy 1,710,519, as of September, '53, had a loan of \$345.00.

Q. I will shorten this a little bit. Just tell us whether all of the policies were encumbered at that time or not, the amounts being immaterial for the present.

A. No, they were not.

Q. They were not?

A. Not all encumbered on that date.

Q. What ones were not?

A. 1,861,700, 1,861,701, 1,919,863, and 1,952,847.

Q. Very well. Then, of the eight policies, Exhibits 1, 2, 3, and 4 were encumbered at that time, and Exhibits 5, 6, 7, and 8 were not encumbered at that time?

Mr. Greenough: He didn't have the exhibit before. [99]

Mr. Arnold: That's right, I'm sorry. I will withdraw the question.

Q. Now, the next question, Mr. White, relative to those four that were encumbered at that time, were those loans subsequently paid and discharged subsequent to September 23, 1953?

A. No, sir.

Q. They have carried through until the present time?

A. Yes, sir.

Q. Those original loans?

A. Yes.

Q. Very well. Now, relative to the remaining

(Testimony of J. K. White.)

policies that were not encumbered at that time, were they ever subsequently encumbered?

A. Yes.

Q. At what time, what date?

A. February 21, 1955.

Q. In other words, is this a fair summary, that of the eight policies which are all now encumbered, four of them were encumbered at the time of the execution of the Stanfill trust on September 23, 1953, and that encumbrance continued to the present date, and the other four policies were subsequently encumbered in February of 1955 and that encumbrance continued until the present date?

A. Well, February the 21st, 1955, and there were additional [100] loans. The additional loans are March, '53, which was prior to the Stanfill trust, that's right.

Q. Mr. White, during the period that Mr. Etter was cross examining you, there was some discussion relative to assignments and changes of beneficiary. Are you in a position to tell the Court the difference between the two insofar as they relate, at least, to your Company and your policies?

A. No, assignments are something I am not entirely familiar with. But changes of beneficiary are, yes, merely where the policy holder asks for a change of beneficiary.

Q. Is an assignment equivalent to a change of beneficiary? A. No.

Mr. Arnold: That is all, Mr. White, Thank you.

(Testimony of J. K. White.)

Cross Examination—(Continued)

Q. (By Mr. Etter): What does the assignment constitute, then?

A. Well, I think that would be a question for the head office to decide.

Q. Well, what I mean is you said it wasn't equal to a change of beneficiary?

A. To the extent that the change of beneficiary always is a separate document. An assignment, that is a form the company doesn't assume any responsibility for the [101] validity of.

Q. That is true, but the assignment you don't assume my responsibility. What does it mean to you as an insurance man without giving us any law on it?

A. Well, it is recorded for what it may be worth.

Q. Doesn't change the ownership of the policy?

A. Well, there are various types of assignment and I would hesitate to say whether it actually would or would not.

Q. Does it act as a pledge, in your opinion?

A. No, it is usually security of some kind or the policy that is the pledge. It is the assignment that covers the pledge.

Q. The policy is the pledge, but the assignment covers it, is that correct? A. Yes.

Q. Does it establish new ownership in the policy as far as your company is concerned?

A. I don't think I am qualified to answer—

Mr. Greenough: Excuse me, the witness is about to say he is not qualified. I don't know whether it

(Testimony of J. K. White.)

is appropriate for me to make any objection here. I simply want to observe that counsel for at least two of the parties have been, I think, addressing questions to Mr. White which involve technical questions of law, for example, what is the effect of a change of assignment, an assignment, or a [102] change of beneficiary. Legally, I think that is a question of law for the Court. I don't object to Mr. White answering if he knows.

The Court: It is is sometimes difficult to draw the line between what is a subject of law and what is a subject of expert testimony on insurance procedure. It is a little difficult to draw the line. If he gets upon the domain the Court thinks is the law, I will not be influenced by his answers, you may be sure.

Mr. Etter: I might say, your Honor, that is what I had in mind and possibly Mr. White didn't understand, but I felt the same way, that as far as insurance procedure, I would like to have his view on his insurance procedure and if the Court thinks he is wrong, of course, that is a question of law.

Mr. Greenough: Well, of course, I think perhaps it would be relevant to ask Mr. White whether he has any position with Sun Life Assurance Company of Canada, that is, whether he is a man authorized or has the knowledge as to the company's policy or official view as to these various questions. I doubt very much if he has, but if he hasn't, why, I think he shouldn't be required to answer.

The Court: Well, if you feel at any time that

(Testimony of J. K. White.)

you are not qualified to or in a position to answer, you have a perfect right to say so, Mr. White, and I think you have done so.

A. I have said it. [103]

The Court: If it is a matter that has to do with the policy of your company that isn't within your control, say so.

Q. (By Mr. Etter): I might ask you this: When these policies through your company are pledged, do they use the same form of assignment that are in here? A. Yes.

Q. They do? A. Yes.

Q. Now I will ask you if you can answer this: After one of these pledges is made to the bank and one of these assignments is filed, as far as your company is concerned, who owns that policy?

A. Well, the question of assignment is sort of clouded and I always refer it to the head office who are better qualified to act on it.

Q. Well, I am assuming this, assuming there is no dispute like is involved here and I have the policy with your company and I go in and pledge it to a bank for a mortgaged loan or something like that, file an assignment, as this has been filed here, to the Spokane & Eastern, say, or some other bank and there is no argument about it at all and no contention, what is the policy as far as you are concerned and the experience you have had as to the ownership of that policy after the assignment is filed in favor of the bank? [104]

Mr. Rowan: If the Court please, I am going to

(Testimony of J. K. White.)

object to that unless he couples his hypothetical question, if it is such, with the statement that the beneficiary might be minors.

Mr. Etter: All right, I will say that.

A. Well, the assignment prevented the insured from borrowing on the policy or changing the beneficiary.

Q. The assignment prevents that?

A. Yes.

Q. That's right.

A. Without the knowledge and consent of the assignee.

Q. Who, in the case I gave you, was the bank?

A. That's right.

Mr. Etter: That is all.

The Court: Any other questions of this witness?

Mr. Rowan: I have one more.

The Court: All right.

Cross Examination—(Continued)

Q. (By Mr. Rowan): Calling your attention to the Plaintiff's Exhibit 11, Mr. White, will you refer to the requests for assignment, any one of them, signed by Mr. Stanfill? Is the word "trustee" affixed after his name? A. No.

Q. He signed individually. So far as you [105] know, did he do that in all his requests for assignment? A. Yes, I think that's right.

Q. And I believe you stated you do not find anywhere in the correspondence a request signed by

(Testimony of J. K. White.)

Mr. Stanfill individually or as trustee for a change of beneficiary of any of the policies?

A. That is correct.

Mr. Rowan: That is all.

Mr. Etter: That is all.

The Court: Any other questions of this witness?

Mr. Etter: That is all, your Honor.

The Court: If not, then I assume Mr. White may be excused. You will be available here, I assume?

A. Yes.

The Court: For the next day or two so we can call you during office hours.

(Witness excused)

The Court will recess then until 1:30.

Mr. Greenough: If your Honor please, may I ask, do you want me here this afternoon?

The Court: Well, not unless counsel do. I think you might be excused on the same basis as far as I am concerned. When it comes time to close this up and get your attorney fee, I assume you will want to be here, but up until that time, you may be excused. [106]

Mr. Greenough: I would like to be here then, yes, your Honor.

(Whereupon the trial in the instant cause was recessed until 1:30 o'clock p.m., this date.)

1:30 p.m., October 18, 1955

(The trial of the instant cause was resumed pursuant to the noon recess, all parties being

present as before with the exception of Mr. Greenough, and the following proceedings were had, to-wit:)

The Court: All right, proceed. I don't know who's next.

Mr. Rowan: If the Court please, I am next in order, but Mrs. May's defense will hinge upon the Stanfill trust and the surrounding circumstances of the will, and so on, and Mr. Stanfill is the client of Mr. Arnold and he has the authenticated copies on the Defenbach assignment for creditors. For that reason, I would like to defer my proof until those are admitted in evidence, but at this time I would like to suggest a trial amendment of two words at page 4 of my original answer.

At the bottom of the page in the third count, the last line, I would like to correct the first word "all" to [107] "many."

The Court: Oh, I see.

Mr. Rowan: The first word "all" to "many" and the next word "all" to "the." So it will read: "This defendant has paid many premiums upon the policies."

The Court: You may make that amendment and then the Clerk will write it in here.

Mr. Rowan: Thank you. I will defer until the exhibits are offered, then.

The Court: All right. Do you wish to proceed, then, Mr. Arnold?

Mr. Arnold: If the Court please, if it is agreeable and considering the chronology of certain events and the exhibits, I believe it would be proper,

if the Court would permit me, to make a brief statement on behalf of Mr. Stanfill's case as trustee and then call him and identify his documents and exhibits.

The Court: All right, you may do that.

Mr. Arnold: If the Court please, we have been obliged to cross examine the representative of the life insurance company and to some extent got things a little out of order. I am not going into any long background of these people except to say very briefly that Robert Weyen, the deceased in this case, at the time of his death was in his late thirties and a very successful logging operator and had [108] been since the early nineteen forties. He had made a lot of money. He operated in Idaho and Eastern Washington and Oregon and I think even had interests in Canada and California.

The Court: What kind of an operator did you say he was?

Mr. Arnold: Pardon?

The Court: I didn't get your statement as to what kind of an operator he was?

Mr. Arnold: Logging operations.

The Court: Oh, logging, yes.

Mr. Arnold: And buying and selling of timber, for which he had a knack. But in the early fifties, probably about the year 1952, his situation began to decline and his domestic situation began to decline. Now, whether one was brought on by the other, I don't know, or which one came first, I don't know, but actually simultaneously the situation deteriorated until the fall of 1953 when he

divorced his wife. At that time they had two small children, which brings us, I believe——

The Court: Is that Mary P. Weyen?

Mr. Arnold: Mary P. Weyen. Which brings us to the point of commencement.

On September 23, 1953, Robert Weyen did three very important things. First, he obtained on that day a decree of divorce from Mary P. Weyen and in that decree a confirmation of a property settlement agreement. [109]

The Court: I am not sure I got the date of that decree, pardon me?

Mr. Arnold: September 23, 1953.

Mr. Etter: It is the 22nd.

The Court: September 22nd?

Mr. Etter: It is not the 23rd, it is the 22nd of September.

The Court: Well, all right.

Mr. Etter: Here is a copy of the decree.

The Court: September 22nd.

Mr. Rowan: I think that is correct, September 22nd.

The Court: I don't know that one day would make any difference, but we may as well have it accurately here.

Mr. Arnold: On September 22nd he obtained a decree of divorce and approval of a property settlement agreement in that decree. The separation agreement will be offered I think as far as material here. It is probably important only for the fact that it made provisions for the future care, maintenance

and the support of the minor children, as, of course, did the decree approving the same, and also for medical attendance for these children if necessary.

On the following day, September 23, 1953, Weyen consummated the other two important acts. First, he caused to be prepared and executed what has been referred to this morning here as the Stanfill [110] trust in which he made Mr. E. J. Stanfill trustee under what we believe to be an irrevocable and voluntary trust for the benefit of the minor children of certain insurance policies which are listed in a schedule attached to that trust agreement and carried the provision for the same trust to apply to any subsequent policies which he might take out and make Mr. Stanfill beneficiary of.

On the same day, he executed his last will and testament, which provided, in substance, that he had heretofore provided through insurance policies on his life for the minor children and a stipulation leaving them a bequest in the event such policies should lapse or become void, which it will be our contention did not happen, and left the residue to a person outside the family. In that document, he named E. J. Stanfill as executor of his estate and he also named E. J. Stanfill as testamentary guardian over the children. I might add that, as Mr. White testified and the record will show, the beneficiary on the several policies involved in this litigation was at that time changed to Mr. Stanfill as trustee and referring to the trust agreement of September 23, 1953.

Sometime in 1954, the trust agreement was filed

of record and was recorded in the Auditor's Office in Asotin County, State of Washington.

In the fall of 1954, E. J. Stanfill withdrew from the practice of law and engaged in farming enterprises in nearby Oregon. At that time there [111] was a shift in the assistance being given Mr. Weyen necessarily in his logging operations from Mr. Stanfill to Mr. Defenbach, which brought about the execution of what we refer to as the Defenbach assignment for the benefit of creditors, which I presume counsel will in due time place in evidence.

Then, of course, followed this year in April the the untimely accidental death of Mr. Weyen, and the Court, I think, is familiar from Mr. White's testimony of the general nature and extent of the insurance that was taken out and the fact there were loans on it and there were assignments and the like which will come forward in due time.

I think that is sufficient for an opening statement, but with the Court's permission, I will call Mr. Stanfill and identify these documents and mark them in evidence.

Mr. Etter: Your Honor, probably to have it all, I would like to add onto that statement.

The Court: Well, anyone who wants to may make an opening statement at this time and we will get them all out of the way, unless someone wishes to reserve his statement.

Mr. Etter: No, the one I will make is very brief.

The Court: If you wish to make a statement, you may at this time.

Mr. Etter: I think I should point out to your Honor that on the 19th of August of 1953, [112] Robert Weyen and his then wife, Mary Weyen, entered into the property settlement which is the subject of the decree of approval on September 22nd of 1953. In other words, about a month and several days prior to the time of the entry of the divorce decree, a property settlement was entered into between Robert Weyen and Mary Weyen which was approved by the Court's decree on the 22nd of September.

The Court: Where was the decree entered?

Mr. Etter: It was entered in Asotin County by Judge Jordan upon the application of Robert Weyen. Thereafter, and on the 23rd, as Mr. Arnold stated, there was executed by Mr. Weyen two instruments, one a will, and I am not going into the provisions of the will until it is in evidence, the other was the so-called Stanfill trust agreement that was mentioned. Thereafter, and on October the 7th of 1954, after the creation of the trust agreement, on October the 7th of 1954, there was executed by Mr. Stanfill an assignment and a transfer of one of the policies that was in the so-called irrevocable trust. That policy is the first one that is listed in the action of interpleader by Mr. Greenough. It is number 1,447,698. That policy was transferred at that time. In other words, on October the 7th of 1954, it was transferred to one of the present parties in the interpleader, Elfrieda May, who was the mother of Robert Weyen. That is that first policy. Thereafter, and I might say at this time, Mr. Weyen was [113]

then and had been for some time heavily in debt, both as to his operations and as to the equipment which he operated, well in excess of \$100,000, and that because of that situation and impending action by all of these creditors holding this money, an assignment of all the policies was executed. In other words, this was the second assignment of policies in the so-called trust, that was executed by Mr. Stanfill, and consequently, on or about the 24th day of October after the execution of the assignment to Mr. Defenbach as the trustee for creditors and the execution of that assignment, there was then assigned and transferred over or pledged, any way that you want to put it, all of the remainder of the policies, being 2 to 6 in the second count, and 3 and 4, the policies in the third and fourth counts; in other words, the balance of the policies originally in this particular trust, one of which had gone to Mrs. May in October, the rest of them then were transferred over by assignment with the Sun Life and were transferred over by the execution of Mr. Stanfill and Mr. Weyen himself, and that was the posture in which the facts were when Mr. Weyen was killed in an unfortunate accident in April, and that I think is probably the extent or rather rounds out the whole picture of actually what has occurred and I think the rest of it is probably as indicated by the circumstances and the documents themselves.

The Court: Do you have anything to add? [114]

Mr. Rowan: Not at this time, your Honor.

The Court: All right, proceed then, Mr. Arnold.

Mr. Arnold: Mr. Stanfill.

E. J. STANFILL

called and sworn as a witness in his own behalf, was examined and testified as follows:

Direct Examination

Q. (By Mr. Arnold): Mr. Stanfill, will you state your full name?

A. E. J. Stanfill.

Q. Where do you reside?

A. Enterprise, Oregon.

Q. How long have you resided in Enterprise, Oregon?

A. Since November 1st, 1954.

Q. What is your occupation there?

A. Farmer.

Q. How long have you been engaged in the occupation of farming?

A. Since November 1st, 1954.

Q. What was your prior occupation?

A. I was an attorney.

Q. Where did you practice?

A. Clarkston, Washington.

Q. How long did you practice at Clarkston, Washington?

A. Five years. [115]

Q. Prior to November 1st, 1954?

A. That's right.

Q. Were you acquainted with Robert Weyen?

A. I was.

(Testimony of E. J. Stanfill.)

Q. Did you represent Robert Weyen in a divorce action, Robert F. Weyen against Mary P. Weyen?

A. I did.

Q. In Asotin County, State of Washington?

A. That is correct.

Mr. Arnold: Your Honor, there being two defendants, different defendants, that will introduce exhibits, I am wondering what would be considered the most feasible plan for numbering? We now have Plaintiff's 1 to 22, inclusive.

The Court: Well, we follow the practice here of numbering them consecutively, regardless of who offers them, so we will just put defendant's name and continue the numbers on up.

Mr. Arnold: That would be Stanfill's 23, then, for identification.

The Court: Defendant Stanfill's 23?

The Clerk: Yes, your Honor.

Q. (By Mr. Arnold): Mr. Stanfill, I will hand you here Defendant Stanfill's Exhibit 23 for identification, and ask you what it is?

A. It is a final decree of divorce and a [116] property settlement agreement.

Q. And does it bear the formal authentication on the cover sheet? A. It does.

Mr. Arnold: If the Court please, I will offer in evidence Defendant Stanfill's identification 23, being an authenticated copy of the separation agreement and the decree of divorce approving the same.

Mr. Etter: No objection.

The Court: It will be admitted, then.

(Testimony of E. J. Stanfill.)

(Whereupon, the said document was admitted in evidence as Defendant Stanfill's Exhibit 23.)

Mr. Arnold: Mark this Defendant Stanfill's Exhibit 24.

The Clerk: Marking a copy of the will as Stanfill's Exhibit 24, your Honor.

Mr. Arnold: And mark that trust agreement as 25.

The Clerk: Copy of the trust agreement is marked as Stanfill's 25, your Honor.

Q. (By Mr. Arnold): Mr. Stanfill, handing you Defendant Stanfill's Exhibit 24 for identification, can you identify that document?

A. It is the last will and testament of Robert [117] F. Weyen.

Q. Is it authenticated? A. It is.

Q. From what court and jurisdiction?

A. Tenth Judicial District Court, Nez Perce County, Idaho.

Q. Do you know of your own knowledge that that will is in the course of administration or probate in the state of Idaho? A. It is.

Q. Are you qualified and acting as the executor thereof? A. I am.

Mr. Arnold: If the Court please, I will offer in evidence Defendant Stanfill's identification 24, being an authenticated copy of the last will and testament of Robert F. Weyen.

Mr. Etter: No objection.

The Court: It will be admitted.

(Testimony of E. J. Stanfill.)

(Whereupon, the said document was admitted in evidence as Defendant Stanfill's Exhibit 24.)

Q. (By Mr. Arnold): Handing you Defendant Stanfill's Exhibit 25 for identification, I will ask you what that document is?

A. Trust agreement between Robert F. Weyen and E. J. Stanfill. [118]

Q. Is it authenticated? A. It is.

Q. Are you the E. J. Stanfill that is named in that agreement as trustee? A. I am.

Q. And has that agreement ever been recorded?

A. It was.

Q. Where?

A. In the Auditor's office of Asotin County, Washington.

Q. On what date? A. June 24, 1954.

Mr. Arnold: If the Court please, I will offer in evidence Defendant Stanfill's Exhibit 25, being a certified copy of the Stanfill trust to which reference has been made previously today.

Mr. Etter: No objection.

The Court: No objection, counsel?

Mr. Etter: No objection.

The Court: It will be admitted.

(Whereupon, the said document was admitted in evidence as Defendant Stanfill's Exhibit 25.)

Q. (By Mr. Arnold): Mr. Stanfill, were you named as guardian of the persons of Robert F. Weyen's two minor children in his last will [119] and testament?

A. I was.

(Testimony of E. J. Stanfill.)

Q. Have you qualified as such? A. Yes.

Q. Where do those children reside?

A. In Clarkston, Washington.

Mr. Arnold: Mark this, please, twenty whatever it is.

The Clerk: Defendant Stanfill's Exhibit 26.

Q. (By Mr. Arnold): I hand you Defendant Stanfill's Exhibit 26 for identification and ask you what that is?

A. Letters of guardianship in the matter of guardianship of Daryl Weyen and Carolyn Weyen.

Q. Is that certified? A. It is.

Q. By whom?

A. The Clerk of Asotin County.

Mr. Arnold: I will offer in evidence Defendant Stanfill's Exhibit 26 or identification, being a certified copy of letters of guardianship.

Mr. Etter: No objection.

The Court: It will be admitted.

(Whereupon, the said document was admitted in evidence as Defendant Stanfill's Exhibit 26.)

Q. (By Mr. Arnold): Now, Mr. Stanfill, referring to [120] Defendant Stanfill's Exhibit 25, the trust agreement, is there a schedule of policies attached to that agreement, policies of life insurance?

A. There is.

Q. At the time of or shortly after the execution of that agreement, were the policies listed thereon delivered to you?

(Testimony of E. J. Stanfill.)

A. They were in my office prior to the execution of this agreement.

Q. Were the beneficiaries changed to you at any time within your knowledge?

A. Well, we had made requests for changes, but I don't know whether they were changed or not from my own personal knowledge other than today.

Q. Well, I think the record on those policies is in and I will not test your personal recollection then.

You state, however, the policies were in your office? A. They were in my office at one time.

Q. Now, at any time subsequent to that, did you ever request to the Sun Life Assurance Society or sign a request to the Sun Life Assurance Society to change the beneficiary of those policies or any of them? A. No.

Q. Now, Mr. Stanfill, I believe you stated that you left [121] Clarkston and went into farming about November 1st, 1954? A. That's right.

Q. Had you been acting as Mr. Weyen's attorney up to that time?

A. I think I handled most of his legal work in Washington up until the first of October, 1954.

Q. Did you notify Mr. Weyen that you were going to withdraw from practice?

A. Yes, the first part of October, I advised him to get another attorney, that I wouldn't be available to continue his legal work.

Q. Did you transfer any papers or documents to

(Testimony of E. J. Stanfill.)

any other attorney or person in connection with that move? A. Not to my recollection.

Q. Your office in Clarkston was taken over by another attorney, was it not?

A. That is right.

Q. And your files remained substantially intact there? A. That's right.

Q. And on frequent occasions, you dropped into that office after your retirement to take care of any necessary business? A. Yes.

Q. Did you ever have any conversations with Mr. Defenbach about Mr. Weyen's affairs at about that time? [122]

A. Not to my recollection.

Q. Did you have any conversation with Mr. Keeton about Mr. Weyen's affairs?

A. I think that Mr. Keeton called me over the phone shortly after I had told Mr. Weyen to get another attorney, and wanted to verify a balance due on the creditors' schedule.

Q. What do you mean by creditors' schedule?

A. Well, there was a credit pool arrangement made out and at the time I left I was acting as a manager of that pool for Weyen's creditors and that was the primary reason for my telling Weyen to get somebody else so they could carry out that pool arrangement.

Q. Well, what do you mean as manager of the pool? What did you do in that capacity?

A. Well, I would receive the money due Weyen from the sawmill and make disbursements to the

(Testimony of E. J. Stanfill.)

various creditors listed pro rata as the money came in.

Q. How long had that been in operation?

A. I believe I made one disbursement, I think a matter of six weeks or two months before I left.

Q. And did you have a balance on hand that belonged to Mr. Weyen?

A. No, I disbursed whatever I received. I disbursed pro rata the whole thing. [123]

Q. To what, then, did you refer when you said Mr. Keeton called you to verify a balance?

A. As I recall, he asked me what my balance was in this credit pool. I was a party to it for back attorney fees.

Q. Oh, I see. Verifying the balance due you as a creditor?

A. As a creditor in that pool. That is my present recollection of it.

Q. Did you ever sign any document whatever after September 23, 1953 in your capacity as trustee under Defendant's Exhibit 25, the trust agreement?

A. Not to my recollection.

Q. Did you ever sign any as an individual?

A. I believe I did.

Mr. Arnold: You may cross examine.

Cross Examination

Q. (By Mr. Etter): Mr. Stanfill, when you talked with Mr. Keeton about your claim in the pool, he advised you what was happening in Idaho, did he not, and of the creation of what they called

(Testimony of E. J. Stanfill.)

the Defenbach pool or arrangement at Lewiston?

A. He told me they were setting up a new pool arrangement.

Q. That is correct. He told you, did he not, that there were a lot of additional creditors in Idaho involved? A. I believe he did.

Q. And that the amount of the indebtedness of Mr. Weyen was [124] very large?

A. Well, we both knew that. If he told me, we knew it anyhow. He may have said that.

Q. Did he talk with you at that time or at any later time about the insurance policies that are involved in this particular litigation?

A. Not to my recollection.

Q. Beg your pardon?

A. Not to my recollection.

Q. Did you talk to him in his office any time about them? A. I don't recall it if I did.

Q. Well, referring now to Exhibit No. 11 and this particular sheet which is entitled "Assignment for Value," you recognize your signature there?

A. I do.

Q. Do you know where that was signed?

A. As I recall it, it was in my office.

Q. Was Mr. Paul Keeton present? A. No.

Q. Was it signed in your office or was it signed in Mr. Keeton's office?

A. As I recall, it was mailed to my office and I stopped in from the ranch and Mr. Moore said, "There are some papers Keeton wants you to sign," and I just looked down and saw Bob's signature

(Testimony of E. J. Stanfill.)

and signed it and left it [125] there. That is my recollection.

Q. Was there a covering letter from Mr. Keeton with respect to the purpose? In fact, how did you know about signing this particular document, which is an assignment for value of the numbered policies that appear on the back of the document? How did you know you were supposed to sign that?

A. I didn't know that, but I did know that I had asked Bob to get somebody to carry on and as I come in I signed whatever papers were in the office. This was there, and I signed it.

Q. Well, didn't you know what it was?

A. Well, to be right frank with you, I didn't pay too much attention.

Q. Didn't you read it?

A. Well, I don't recall reading it.

Q. And do you know what it is now?

A. Yes.

Q. What is it?

A. I know what it purports to be.

Q. What is it? A. An assignment.

Q. Of what?

A. Of these numbered policies.

Q. And you didn't know that until today? [126]

A. I don't recall. In fact, I didn't know until the other day that I had even signed. I mean, I didn't remember that.

Q. You never had any discussion with Mr. Keeton about it? A. No, sir.

The Court: What is that date?

(Testimony of E. J. Stanfill.)

Mr. Etter: 24th day of November, 1954.

Q. So your testimony here, Mr. Stanfill, is that you didn't know why you signed it or what it was when you signed it and didn't pay any attention to it?

A. That is substantially it, all right. I hate to admit it, but I really didn't.

The Court: I haven't had the benefit of examining these documents as closely as you gentlemen. Who is it to?

Mr. Etter: This is an assignment for value.

The Court: From Stanfill to whom?

Mr. Etter: From Stanfill and Robert F. Weyen to Ralph B. Defenbach, trustee.

The Court: All right. Yes, I see.

Mr. Etter: That is what it is.

Q. Now, referring again——

Mr. Etter: If the Court please, this is Exhibit 11 again. This is likewise another assignment for value which is dated the 7th day of October of 1954, in which there is an assignment by Robert Francis Weyen and E. J. Stanfill of [127] Policy No. 1,447,-698, which is the policy in count 1 of the interpleader, an assignment to Elfrieda May of 857 North Haworth, Los Angeles 48, California.

Q. Directing your attention to this assignment, I will ask if you recognize your name there?

A. I do.

Q. Where was that signed?

A. That could have been signed in Keeton's office. I recall going to his office one time and that

(Testimony of E. J. Stanfill.)

could have been signed there, but I don't recall where and when I signed it, but I admit that is my signature.

Q. Well, do you know what that was?

A. I do now.

Q. Well, I mean don't you recall that you made an assignment of one of the policies that you were then holding supposedly in the irrevocable trust or purported trust?

A. I don't recall, I assume that I must have read that. But I don't recall any circumstances around it, whether any discussion was ever had about it, I just don't recall it.

Q. I will ask you whether or not you recall whether you, in addition to signing, putting your signature on this assignment, that is, to Mrs. Elfrieda May and the assignment which I just pointed out to you to Ralph B. Defenbach, trustee under that certain assignment so and so, if you not only signed those two but that if you [128] don't recall that you also signed a policy that is not in issue here but which was in the trust, being No. 1,937,-383, a policy in the Macabees of Detroit, Michigan, for \$3,000, if you do not recall that you also signed an assignment in the same fashion that you have signed these two to Mr. Defenbach in that policy?

A. I don't recall unless it was done at the same time that this was signed. There may have been two instruments that I signed at the same time.

Q. Yes, but you recall, do you not, that in your trust arrangement that you entered into with Mr.

(Testimony of E. J. Stanfill.)

Weyen, you held this numbered policy in the Macabees, Detroit, Michigan, for \$3,000? That was part of your trust?

A. I knew that these several policies were in that trust. No particular one, I knew there was ten or so.

Q. And do you recall, or do you not recall, that you likewise made an assignment by signature of this policy that I am asking you about, the Macabees, besides these policies here?

A. I don't recall making any assignment on the Macabees or any other other than what I signed at that time. Nobody had said anything to me about assigning policies. No policies were shown to me.

Q. There are likewise two other policies that you had in your trust agreement with the Mutual Benefit of Omaha, [129] Nebraska. There were two policies, one for \$2,500 and one for \$5,000. Will you tell me now whether you executed assignments by signature in the same fashion on those two Omaha policies as you did on the policies which I have pointed out to you in Plaintiff's Exhibit No. 11?

A. I didn't know the policies existed. If I signed them, I didn't know about them.

Q. Beg your pardon?

A. They are not in my trust, I didn't know about them. I didn't have possession of these policies after I was made trustee.

Q. Beg your pardon?

A. I didn't have possession of the policies.

Q. After you were made trustee?

(Testimony of E. J. Stanfill.)

A. Just to make the transfers. I don't know who had them, whether Bob Weyen had them or where they went. It is hard for me to say what policies I signed for, if any.

Q. You don't recall whether or not you executed assignments on those policies? A. No.

Q. Or the Macabees policy, you don't recall that?

A. No. I mean I couldn't distinguish one policy from another just by number.

Q. But you do recall that this is your signature?

A. That's right. [130]

Q. On the assignment of this policy numbered 1,447,698 to Elfrieda May of Los Angeles on October 7th, 1954, and you do recall that this is your signature on the rest of the policies that you had in the trust, excluding the Macabees, to Mr. Ralph B. Defenbach, which also appears here?

A. I recall signing this paper, but I don't recall the contents of it.

Q. Well, did you know what the paper was for?

A. No, nobody said anything to me.

Q. Beg your pardon?

A. Nobody said anything to me about it. Keeton didn't, Weyen didn't.

Q. You never talked to Mr. Keeton about the purpose of your signing those assignments?

A. No.

Q. Never talked to Mr. Keeton about the purpose of signing the one to Elfrieda May?

A. I can recall going into his office. Whether it was to sign the Elfrieda May or something else, I

(Testimony of E. J. Stanfill.)

don't know. As I recall, I was in his office once from the time I left until after this series of events.

Q. Well, after this trust arrangement was signed, you, as I gather it, didn't exercise any control over the policies [131] at all?

A. The policies, as I recall, were sent over to Homer Lipps, or he came over to pick them up. He is the agent down there and they were to make the transfers and, as far as I recall, they never got back to my office.

Q. In other words, as I gather it, it was sometime in September or October of 1953?

A. Yes, I think that would be right.

Q. And you never saw the policies after that?

A. I don't recall ever seeing them back——

Q. Beg your pardon?

A. I don't recall ever getting them back to my office, unless they came back and they took them to apply for a loan or something, but I know this, they weren't there when I quit.

Q. You didn't have any control nor did you exercise any, over those policies, is that correct?

A. Well, there was none to exercise.

Q. Beg your pardon?

A. There was nothing to exercise that I could see.

Q. I see.

Mr. Etter: I think that is all. Do you have any other questions?

Mr. Arnold: If the Court please, may I ask one or two more questions of the witness? [132]

(Testimony of E. J. Stanfill.)

The Court: All right.

Redirect Examination

Q. (By Mr. Arnold): Referring, Mr. Stanfill, to the creditors' pool of which you were manager for Mr. Weyen prior to your retirement from the practice of law, were any of these insurance policies in any way involved in that creditors' pool?

A. No.

Q. There was no connection between that pool and the trust agreement, which is Exhibit 25?

A. No.

Q. Further, you will note that the instrument you did sign has some reference to the fact that it is an assignment for value. Do you know of any value that was paid for the assignment? A. No.

Q. Did you receive any? A. No.

Q. Now, one more thing. Referring to Exhibit 25, and particularly to the last paragraph thereof, we find the following:

"The donor specifically reserves the right during the time of this trust to pledge any of such policies as collateral or to exercise the loan rights as provided in said policies, [133] and in the event the donor makes application for such loans, it is hereby expressly understood that the signature of the trustee named herein shall not be required to join in the application for said loans."

Now, you knew as a matter of fact, of course, did you not, the terms of this trust agreement which you prepared?

(Testimony of E. J. Stanfill.)

A. I did at the time. I never had an occasion to pull it out of the file and go over it after the time I drew it up.

Q. But you did know that Mr. Weyen could do certain things with those policies even without your signature, didn't you? A. Yes.

Q. And did you ever sign anything in connection with these policies that did not previously have Mr. Weyen's signature on it? A. No.

Q. Was his signature always there before you signed? A. Always there.

Mr. Arnold: That is all.

Mr. Etter: That is all.

Mr. Rowan: I have a question or two, if the Court please. [134]

The Court: All right.

Cross Examination

Q. (By Mr. Rowan): Mr. Stanfill, are you still acting as guardian of the estates of the two minor children? A. I am.

Q. And are you still acting as trustee for the children as beneficiaries under the trust agreement set up to you? A. I am.

Mr. Etter: I think probably that is going to be a question for the Court.

Mr. Rowan: It is largely elementary.

Q. Did anyone ever request, either Bob Weyen or Paul Keeton or anyone else, that you sign any instrument as trustee in any of these exhibits that

(Testimony of E. J. Stanfill.)

have been offered other than the trust agreement itself? A. No.

Q. Did you ever sign as trustee? A. No.

Q. Now, referring to the last paragraph of Exhibit 25, please, do you find any reservation of the right to change beneficiary in there? A. No.

Q. You do find reservation of the right to pledge or cash or whatever the term is that is used? [135]

A. Yes.

Q. And was it your understanding that the children were made the beneficiaries through you as trustee?

Mr. Etter: I will object to that question as calling for the ultimate conclusion that the Court has got to fix. The instrument speaks for itself.

The Court: I think that is a conclusion for the Court to draw, probably. I will sustain the objection.

Mr. Rowan: All right.

Q. Now, you say you were acting in some capacity, manager, or what did you call it, in a creditors' pool?

A. I was handling the money as it came in to pay the creditors under that pool arrangement.

Q. Did that have anything to do whatever with the trust agreement? A. No.

Q. Was it a separate instrument?

A. Yes, it was made out almost a year after the trust agreement.

The Court: I might state in my ruling that the instrument will speak for itself, I am assuming there

(Testimony of E. J. Stanfill.)

isn't any contention here that it is ambiguous or requires extraneous testimony for explanation.

Mr. Rowan: If the Court please, there is a possible duplication or a dual authority in that and that is the reason [136] I was asking.

The Court: I think even so, however, that if extraneous testimony is resorted to to resolve an ambiguity, that it would be the surrounding circumstances, what the parties said, and what is indicated they intended by what they did and said, rather than the trustee's intention. He might intend one thing and say another, not what he might have thought about it.

Mr. Etter: I find no contention anyplace that there is any claimed ambiguity.

The Court: It is rather the character of the instrument that is in controversy, whether it is irrevocable or not.

Q. (By Mr. Rowan): I will ask you then, Mr. Stanfill, if at the time you drew that trust for Mr. Weyen, whether or not he gave you instructions to make yourself the beneficiary irrevocably?

Mr. Etter: Just a minute, I will object to that. Instructions to make him trustee irrevocably, that instrument speaks for itself. That question is leading and suggestive and calls for the statement of a deceased party, as a matter of fact, and is not necessary to resolve any ambiguity.

The Court: I will sustain the objection to that, I think, unless there is some ambiguity pointed out.

(Testimony of E. J. Stanfill.)

Mr. Rowan: I will withdraw the question and stand on [137] the sustaining of the objection.

Q. Did you understand at that time that there was a difference in assignment of insurance policy and a change of beneficiary.

Mr. Etter: Object to that, too.

The Court: I will overrule the objection. I don't see the materiality of it. A. Yes.

Mr. Rowan: That is all.

The Court: Are there any other questions of this witness?

Mr. Etter: No.

The Court: I wanted to make this clear. I think it appears, perhaps, from these documents, but we might have a question of conflict of laws here which might be material.

I assume that Mr. Robert F. Weyen and his wife Mary P. Weyen on these critical dates here in September, 1954, September 22nd and 23rd, were residents of the state of Washington, were they?

A. Yes.

The Court: They lived in Clarkston?

A. Yes.

The Court: In Asotin County through all this transaction that you have related here. I assume, then, that Mr. Weyen must have moved to Idaho at some time, didn't he, because [138] his estate is being probated there?

A. He did shortly after the divorce, he moved to Idaho and took up a motel residence.

(Testimony of E. J. Stanfill.)

The Court: But that was after he had executed the trust agreement? A. Yes.

The Court: And after the divorce had been granted? A. Yes.

The Court: And after he had made his will?

A. Yes.

The Court: So that all of these instruments were executed by him while he was a resident of the state of Washington? A. That is correct.

The Court: Any other questions?

Mr. Etter: No.

Mr. Rowan: None.

Mr. Etter: That is all.

Mr. Arnold: If the Court please, the defendant and cross-complainant Stanfill, as trustee, rests at this time with one statement I would like to make, which may be unnecessary but in view of cross examination distinguishing between the assignment to Elfrieda May by Mr. Stanfill and the assignments to Mr. Defenbach, I would like to make it clear that we are claiming adversely to Elfrieda May for the [139] same reason and on the same theory that we are claiming adversely to Defenbach.

The Court: All right.

Mr. Rowan: I will waive any proof at this time.

Mr. Etter: Do you waive it for good?

Mr. Rowan: I am waiving the statement to the Court, for the orderly proof of the case of the Defenbach agreement, I believe, would come next. I have a reply to your counterclaim.

(Witness excused.)

The Court: Is anybody here representing Mary P. Weyen?

Mr. Etter: She is not a defendant, she filed a disclaimer, it is my understanding, and that Mr. Stanfill is appointed as guardian in her place for the children.

The Court: Was she guardian of the children at the time this action was started or was that erroneous?

Mr. Arnold: If the Court please, may I explain what happened?

The will of Mr. Weyen was not filed for record for a few weeks, and as the mother of the children and not knowing that Mr. Stanfill was nominated as testamentary guardian, she filed and obtained, as the mother usually can, letters of guardianship for the children. Upon the discovery that Mr. Stanfill was named as testamentary guardian, she resigned as guardian of the estates of the persons. Separate letters were [140] then issued to her as guardian of the persons of the children and Mr. Stanfill qualified under the will as guardian of the estates of the minor children. So that from the financial standpoint, he was the proper party before the Court as guardian of those children and as trustee, as well.

Now, Mary P. Weyen has filed a disclaimer personally and as guardian of the persons of the children and joined in the prayer of Mr. Stanfill's action as trustee. I think that does appear in the file. At least, I served copies.

Mr. Rowan: May I add, if the Court please, I can clarify this?

Mr. Greenough's complaint was drawn and I think filed before he discovered that Mr. Stanfill had been appointed guardian of the estates of the children, and I told him and he at that time told me he intended to make a trial amendment or have a stipulation to cover it, so if it is necessary, I am sure he will ask that Mr. Stanfill be named and the complaint be deemed amended for that purpose.

The Court: I was a little concerned about it because I thought we might be getting on thin ice here in this Court's jurisdiction. Diversity depends upon the claimants, as I understand it, the diverse citizenship of the claimants in an interpleader action, and there is no one here a resident of this district, as I gather it now, except [141] Mary P. Weyen.

Mr. Arnold: The children are.

The Court: Well, the children are not here except through their guardian, who is a resident of Idaho or a resident of Oregon, is he not? Mr. Stanfill is guardian of the children?

Mr. Arnold: Stanfill is guardian of the estates of the children.

Mr. Rowan: In Asotin County, Washington.

The Court: Well, is that guardianship pending in the state of Washington?

Mr. Rowan: Asotin County, Washington.

The Court: It runs in my mind, we have these cases coming up in connection with automobile collision litigation a good deal, that so far as diversity jurisdiction is concerned, the residence of the guardian and not of the wards or the person rep-

resented is what governs so far as diversity is concerned. I always like to be sure that we have got jurisdiction, because if we haven't got jurisdiction, we have got nothing in Federal Court.

Mr. Rowan: I think I *will that* to Mr. Greenough's attention. I know he wants to correct the complaint.

The Court: It may be all right anyway. I assume if a person is brought in in good faith as a party having an interest and then regardless of whether the Court decides against them or even they disclaim afterwards, that the [142] jurisdiction depends upon the situation as alleged in the complaint. I believe that is true, isn't it?

Mr. Rowan: That is my understanding, and both cross-complaints, as I recall it, allege he was appointed guardian in the state of Washington and they are not denied by any reply.

The Court: Well, all right, go ahead whoever is next here.

Mr. Rowan: We defer to the defendant Defenbach.

The Court: All right.

Mr. Etter: Well, for the matter of the case in chief, at this time we merely have the assignment from the trustee for the benefit of creditors. If you want to examine it, we can have it marked and admitted.

The Court: That will be Defendant——?

Mr. Etter: Defenbach.

The Court: Defenbach.

The Clerk: 27, your Honor.

The Court: Exhibit 27 for identification?

The Clerk: Yes, sir.

The Court: Have you seen this document, gentlemen?

Mr. Rowan: We have a copy. I haven't seen this original.

If the Court please, the defendant objects to the introduction of this unless and until it is [143] proven what the alteration or addition was put in for and how it comes to be inserted. There is an addendum that has been pasted onto paragraph 9 by a separate sheet and we would object to it until proof is made as to how that happened.

Mr. Etter: It is on everybody's copy.

Mr. Rowan: It is on my copy, Mr. Keeton.

The Court: In this copy, I think what Mr. Rowan is referring to under paragraph 9, it seems to be typed here: "Party of the first part has the following policies of life insurance, to-wit:" policy number, name, and amount, and then there is a slip pasted on.

Mr. Etter: All right, it is in all the copies, so I don't know what—Mr. Defenbach, would you take the stand?

RALPH B. DEFENBACH

called and sworn as a witness on his own behalf, was examined and testified as follows:

Direct Examination

Q. (By Mr. Etter): Your name is Ralph B. Defenbach? A. That is correct.

Q. Handing you the Plaintiff's Exhibit 12 for

(Testimony of Ralph B. Defenbach.)

identification—or Defendant Defenbach's Exhibit 27 for identification—will you examine that and tell me what it is?

A. That is an agreement that I signed with Robert F. Weyen [144] wherein I agreed to act as trustee for the benefit of his creditors.

Q. You reside where, Mr. Defenbach?

A. Lewiston, Idaho.

Q. What is your occupation?

A. Public accountant.

Q. And you have resided in Idaho for how long?

A. Oh, approximately thirty years.

Q. And you were acquainted with Robert Weyen in his lifetime?

A. For about eight years prior to his death.

Q. And you consented to act as the trustee in this document? A. Yes.

Q. For the assignment of creditors, is that correct? A. That is right.

Q. And was this document signed by Mr. Weyen in your presence? A. Yes.

Q. And by you? A. Yes.

Q. Can you tell us, with regard to the numbers of the policies, when that was put in there?

A. That was there at the time that I signed the agreement.

Q. And was it there at the time Mr. Weyen signed the agreement? A. Yes. [145]

Mr. Etter: Nothing further.

Mr. Rowan: I have some cross-questions.

(Testimony of Ralph B. Defenbach.)

Mr. Etter: All right, go ahead. Mr. Arnold, go ahead.

Cross Examination

Q. (By Mr. Arnold): Mr. Defenbach, I will hand you Defendant Stanfill's Exhibit No. 25, which is the trust agreement between Robert F. Weyen and E. J. Stanfill dated September 3, 1953. What knowledge, if any, did you have of the existence of that agreement at the time that you executed Defendant's Exhibit 27, which is the assignment to yourself?

A. Well, actually, I had no knowledge until this very moment when I see it, although at a meeting held in attorney Hyatt's office in the early part of July of this year, I think you submitted to me what you alleged to be a copy of such agreement. That was my first knowledge of the existence of any such document.

Q. Mr. Defenbach, did these assignments which were made by Mr. Stanfill and Mr. Weyen to yourself relative to the several policies go through your office en route to the channels for notifying the company? A. No.

Q. Who handled those?

A. I think—the only first exact knowledge [146] I had was receiving the policies from Mr. Weyen. I was informed that this was going to be done.

Q. I see. Did you examine the policies?

A. Yes.

Q. Did you observe that they at one time, at

(Testimony of Ralph B. Defenbach.)

least, or previously had designated Mr. E. J. Stanfill as trustee as beneficiary?

A. I have no memory that I did.

Q. You didn't see that. Without reference as to whether you knew of the existence of this particular agreement or not or of its terms, you did know that Mr. Stanfill was a trustee of some sort of insurance, did you not, at the time of the execution of this agreement?

A. I was told, and it may be recited in the agreement, that he had, that Mr. Stanfill was going to sign a—I don't know what you would call it—a waiver of some claim that he had on these policies and that that was being done.

Q. Mr. Defenbach, I will hand you Plaintiff's Exhibit 8, which is a policy of insurance in the Sun Life dated the 16th of September, 1953, and ask you if that policy was in your possession at the time or prior to the execution of Defendant Defenbach's Exhibit 27? A. I wouldn't know.

Q. Did you see these policies before the [147] execution of this document which is Exhibit 27?

A. No.

Q. You referred, I believe, to a conversation in Mr. Hyatt's office where I showed you an alleged copy of Defendant Stanfill's Exhibit 25. Did you not at the same time tell me that you had always known there was some kind of a trust, but didn't know the exact nature of it or didn't know it was reduced to writing? Didn't you tell me that at that time?

(Testimony of Ralph B. Defenbach.)

A. I have no memory of such a statement.

Q. How is your memory generally, good?

A. Very good.

Q. Did you ever discuss this matter with Mr. Keeton at all? Did you know the terms or the nature of the business you were getting into when you accepted this position as assignee for the benefit of creditors?

A. I discussed the matter very largely with other representatives of creditors and Mr. Weyen himself. That is where I obtained the information that determined me to consent to act in this capacity. Now, my conversations with Mr. Keeton were very limited.

Q. Did you have any part in the preparation of the assignment for the benefit of creditors, which is Defendant's Exhibit 27? A. No. [148]

Q. Did you read it and study it before you accepted the position?

A. No, I read it, but I didn't study it. Mr. Weyen told me that is what he wanted.

Q. By the way, Mr. Defenbach, what payments, if any, have you in your capacity of assignee for the benefit of creditors made to the Sun Life in the way of premiums? A. What payments?

Q. Did you make on these policies, yes, if any?

A. I couldn't tell you the amount, but some premium payments have been made.

Q. Between the date of November 16, '54 and the death of Mr. Weyen in April of '55?

A. Yes.

(Testimony of Ralph B. Defenbach.)

Q. Also some loans were procured during that period, were they not?

A. That is right. I know what they are.

Q. Were the payments of premiums made in that period of time in excess of the amount procured by loan from the company?

A. Oh, I would say no.

Q. Did you in your capacity as assignee make any examination of public records in your area to determine what indebtedness would appear of record or other showings of the interest of Robert Weyen?

A. No. [149]

Q. Did you at that time know anything about his general financial condition?

A. Yes.

Q. But all the information you had was what somebody else told you, you made no independent examination?

A. All the information was what Mr. Weyen told me.

Q. I see. Did Mr. Weyen tell you anything about any provisions he had made for his children?

A. No.

Q. Referring you to paragraph 7 of Defendant's Exhibit 27, which commences on page three and runs on to page four and lists what purports to be priorities of payments and disbursements, will you examine that and see if you find any provision in that for the care of Mr. Weyen's children?

A. Well, Paragraph (f), living expenses for party of the first part.

Q. Who was the party of the first part?

(Testimony of Ralph B. Defenbach.)

A. Robert Weyen.

Q. I am speaking of the children?

A. Well, I would say that——

The Court: He didn't make any provision for his children in his assignment to creditors, did he? Isn't that conceded?

A. There is a pro rata distribution here [150] of monies, \$200.00 a month child support in the decree.

Mr. Arnold: If the Court please, I think perhaps I should pass this to the Court for examination of the next to the last provision.

The Court: Is that the assignment?

Mr. Etter: It is in the divorce decree, isn't it?

Mr. Arnold: That's right.

The Court: Oh, yes.

Q. (By Mr. Arnold): Now, just to clarify one or two points, Mr. Defenbach, you state that you did not or don't recall that you ever had this policy in your possession or any of the policies in your possession prior to November 16, 1954?

A. No, I'm positive that I didn't.

Q. You have heard the testimony here this morning or this afternoon, particularly on the cross examination of Mr. Stanfill, to the effect that certain assignments were made to you in October on two different occasions? You heard that, did you not?

A. Yes, I heard about some assignments, but not to me, that I know of.

(Testimony of Ralph B. Defenbach.)

Q. Well, didn't anybody ever assign these policies to you?

A. Not in October. I didn't sign this agreement until the 16th day of November.

Mr. Arnold: Beg your pardon, your [151] Honor, there are so many of these I can't lay my hands on the one I am looking for.

The Court: Are those the ones that Mr. Etter called Mr. Stanfill's attention to?

Mr. Etter: That's right, one in October and one in November. The 24th of November, that is the one we are talking about. The other in October is to Mrs. May.

Mr. Arnold: I beg your pardon.

Q. Did you know that anyone had made any assignments of these policies to you after November 16, 1954?

A. Oh, how can I answer that? Yes, I did.

Q. When did you first find out about it?

A. I imagine most of it was hearsay from Mr. Keeton, until I had some dealings with the Sun Life itself and their agents. Probably about the time we secured those loans in February.

Q. What value, if any, did you in your capacity as assignee for the benefit of creditors pay for these assignments of insurance policies?

A. I don't understand your question.

Q. I say, what value, if any, did you as assignee for the benefit of creditors pay for the assignment of these policies to you?

(Testimony of Ralph B. Defenbach.)

Mr. Etter: Well, of course, I think I will object to that. He is a representative of creditors himself, that's all. [152] He is representing the creditors. The consideration appears on the assignment itself.

Mr. Arnold: I don't think that is conclusive and it has been denied in the pleadings that there was any consideration. I asked him what consideration, if any, he paid and I think it is a very proper question.

Mr. Etter: He has already said he is only a representative of the creditors.

Mr. Arnold: I asked him what he paid in that capacity, if anything, as a representative.

The Court: Well, I will permit him to answer. I assume there wasn't anything paid other than claims of creditors here.

A. That would be right, and probably business relationships that I had with Mr. Weyen.

Q. (By Mr. Arnold): What would be right?

A. I don't think I understand your question clearly.

The Court: You didn't pay any money for these assignments? A. No, no.

Q. (By Mr. Arnold): Did you transfer anything in value in property for them? A. No.

Mr. Arnold: All right, that is all.

The Court: Any other questions? [153]

Mr. Rowan: I have a question or two.

(Testimony of Ralph B. Defenbach.)

Cross Examination

Q. (By Mr. Rowan): Mr. Defenbach, will you refer to Exhibit 27, if it is before you?

A. Oh, 27, yes.

Q. Where did you sign that?

A. In Mr. Keeton's office in Lewiston.

Q. Did you read it before you signed it?

A. I glanced through it, yes.

Q. So that you knew what it was?

A. Yes, generally speaking.

Q. And did you check the insurance policies mentioned in that agreement to see if they were all there?

A. At that time?

Q. Yes?

A. No.

Q. At the time you signed it?

A. No.

Q. Did you ever check each one of those policies mentioned in paragraph 9 to see who had them?

A. Oh, I am positive I did at the time that we asked for the loan.

Q. At the time that you signed a consent to a loan?

A. At the time we made the request for the loan, yes, in [154] February. I am positive I did then.

Q. And who got the proceeds of that loan?

A. I did.

Q. And what did you do with it?

A. Deposited it in the trust fund.

Q. The trust fund that you were executing under this Exhibit 27, wasn't it?

A. That is correct.

(Testimony of Ralph B. Defenbach.)

Q. You borrowed on those policies to pay the creditors. Will you refer to the exhibit again and tell us whether you accepted that instrument as a mortgage?

Mr. Etter: Of course, I think the instrument speaks for itself, asking this man whether he took——

The Court: It doesn't seem to me it makes any difference how he accepted it.

Mr. Etter: How he accepted it.

The Court: It wouldn't change the character of it or the character of the transaction.

A. I wouldn't know how to answer that question.

The Court: Doesn't your whole case turn on whether or not this original trust is revocable?

Mr. Etter: That is correct.

The Court: I don't see whether it makes any difference what he thought or what he did. It is revocable if he could make the assignment for the benefit of creditors; if it isn't, [155] he couldn't. It seems to me that this lawsuit turns on that and here we are spending hours about nothing.

Mr. Etter: That is it.

The Court: But go ahead, I don't want to restrict you. If you think you have got something here, why, by all means, put it in.

Mr. Rowan: I want to just ask him to reconcile paragraphs 11 and 14. He says he read it before he signed it.

I might say to the Court that I don't want to

(Testimony of Ralph B. Defenbach.)

impose on the Court, but it is clearly contradictory.

The Court: The only thing I am asking for is enlightenment. You gentlemen asked whether there was any consideration, and so on. I would like to know why that is material. I think that the case turns on whether or not your original trust for the benefit of the children is a revocable trust.

Mr. Rowan: We agree one hundred percent upon that.

Q. Have you looked at the paragraph?

A. The only way I could answer your question would be to depart from your question some. The matter of some kind of an arrangement between Mr. Weyen and his creditors had been brewing for a long time, and on account of the fact that I had handled some of Mr. Weyen's affairs, like his income tax returns, for instance, counsel for some of the creditors suggested that maybe I might be a good third party in some financial [156] arrangement and that met with his approval. So these various attorneys made several requests of me and I had several consultations with them, the first part of it being whether or not I wanted to go into such an agreement. Finally, after talking with Bob Weyen personally, I said that I would, and when I went down to Mr. Keeton's office, this document was prepared. He signed it in my presence and I said, "Is this what you want to do, Bob?" and he said, "Yes, it is." So I glanced through it just roughly and signed it.

Q. Now, when you signed it, did you look at

(Testimony of Ralph B. Defenbach.)

Policy No. 1,952,847, or shortly after that, and find that that was issued directly in the first instance to Mr. Stanfill as trustee? A. No.

Q. You didn't? A. No.

Mr. Rowan: I think that is all.

The Court: Any other questions?

Mr. Etter: That is all.

(Witness excused)

I would like as part of my case to call Mrs. May for a few questions.

The Court: Yes, all right. [157]

ELFRIEDA MAY

called and sworn as a witness on behalf of the defendant Ralph B. Defenbach, trustee, was examined and testified as follows:

Direct Examination

Q. (By Mr. Etter): You are Mrs. Elfrieda May? A. That's right.

Q. You reside in Los Angeles at the present time? A. I work there.

Q. You work there? A. Yes.

Q. Is your residence still in Idaho?

A. My residence is in Spokane.

Q. Oh, in Spokane? A. That's right.

Q. I see. How long has it been here, Mrs. May?

A. Just recently since I came back up here again.

Q. Prior to the time this action was started, you were a resident of California, were you not?

(Testimony of Elfrieda May.)

A. That's right.

Q. And you were the mother of Robert Weyen, now deceased? A. Yes, I am.

Q. Mrs. May, are you acquainted with this document which is indicated as Defenbach's [158] Exhibit 27?

A. I have read it, that's all. That was the only thing I know anything about it. I haven't given it any study.

Q. But you knew about the arrangement to draw such a document for the benefit of your son?

A. That is what they told me.

Q. That is what they told you? A. Yes.

Q. And you discussed this same matter with Mr. Keeton, did you not? A. Yes.

Q. And the purpose of the drawing of the document, isn't that correct?

A. Well, he asked me about it. I didn't know anything about the document or what it should contain.

Q. But I mean he discussed with you the purpose? A. Yes, to cover his debts.

Q. And, as a matter of fact, you paid Mr. Keeton the fee for drawing this assignment, did you not?

A. Well, not exactly for drawing the assignment, I wouldn't say that.

Q. Well, for other things, including the assignment, shall we say? A. Yes.

Q. That is correct. And discussed with him this complete matter? A. Yes. [159]

(Testimony of Elfrieda May.)

Q. And you knew at the time when you discussed this with Mr. Keeton, did you not, Mrs. May, that these policies of insurance were going to be assigned to Mr. Defenbach?

A. I wouldn't know, not at the time they drew those documents.

Q. Didn't Mr. Keeton discuss that with you, too, with you and your son?

A. We were talking about it, but my son didn't want to consent to turn them in there.

Q. I see.

A. He wanted to keep control of them.

Q. Were you down there the day this was signed? A. No, I don't think so.

Mr. Etter: That is all.

Cross Examination

Q. (By Mr. Rowan): Did I understand you to say your son wished to retain control?

A. He wanted to retain control of the documents. He only gave them for collateral to cover his debts during his lifetime, because he expected to pay it off.

Q. Did he always so intend, to your knowledge?

Mr. Etter: I will object to that, your Honor.

The Court: Well, yes, I will sustain the [160] objection.

Q. (By Mr. Rowan): Mrs. May, referring to the one policy which was assigned to you, but in which Mr. Stanfill was made the trustee, you are

(Testimony of Elfrieda May.)

not claiming under that policy as against the trustee? A. No, I am not.

Mr. Etter: Just a moment, pardon me. There is nothing in the pleadings of a disclaimer on behalf of Mrs. May that I can see. The policy which she has in her possession, as I understand it, was assigned to her by Mr. Stanfill from this so-called irrevocable trust, and now counsel is asking whether she has got any claim to it. If there is no claim to it and there is a disclaimer, there is no standing in court as far as a party litigant that I can see.

The Court: It isn't just clear to me what her position may be on that.

Mr. Etter: I submit what could her position be otherwise than as the interpleader action says of having and claiming some interest in it. Well, if counsel is going to make the statement that she doesn't claim any interest in it at this time, I think probably she should be dismissed as a party in the interpleader action.

Mr. Rowan: If the Court please, may I ask another question before your Honor rules?

The Court: Yes.

Q. (By Mr. Rowan): Mrs. May, you are [161] the grandmother of these children?

A. Yes, I am.

Q. And it is your desire that the children retain anything that they are rightfully entitled to?

A. Absolutely, yes.

Q. And as against the children, you are not making any claim, is that correct?

(Testimony of Elfrieda May.)

A. That's right.

Mr. Etter: There is a claim——

Q. (By Mr. Rowan): You are making a claim as against Mr. Defenbach?

A. Yes, I would be.

The Court: I think that the only way that could be done, if she is entitled to the proceeds of a life insurance policy under the law and the facts here, I would have to make a finding and judgment to that effect, unless she wants to formally disclaim here, and if she wants to give it to the children afterward, why, that is a matter for her to decide, but I don't think that I can run a lawsuit where we are saying she is claiming against one party and not claiming against another.

Mr. Rowan: Well, if the Court please, the two claims are a little bit ambiguous, is what I was getting at.

The Court: Oh, well——

Mr. Rowan: I don't think I need to [162] pursue it because I agree with your Honor that the whole case hinges upon revocability of the Stanfill trust and whether there was a reservation of the power to change the beneficiary in that trust.

I would like to ask one question on cross examination.

The Court: Of course, I understand that she is the grandmother of the children and she isn't asserting any adverse claims against them.

The Witness: No.

Mr. Rowan: That is correct.

(Testimony of Elfrieda May.)

Q. Who, if anyone, put up all the money that was put up at the time the Defenbach agreement was signed, if you know?

Mr. Etter: I will object to that as being wholly immaterial, who put the money up.

The Court: I don't know what money you refer to, Mr. Rowan.

Mr. Rowan: We have asked Mr. Defenbach if there was any consideration paid at that time. He said that there wasn't. It could be used either for the purpose of impeachment or for the purpose of showing what consideration was——

Mr. Etter: He said he didn't pay anything for the assignment. Mr. Defenbach said he, Mr. Defenbach, didn't pay anything.

The Court: Didn't pay any money. You [163] mean money put up for the expenses of drafting the assignment?

Mr. Rowan: Money to pay certain creditors at the time the Defenbach agreement was signed.

The Witness: May I explain that, if you please?

The Court: Well, just a moment. I don't see the materiality of it, but I will permit her to answer.

A. At the time this agreement was made, there was a debt that my son owed to his wife that came up in the divorce proceedings that he owed her around \$3,000 or something like that. And at that time when they drew up this agreement, Mr. Keeton called me and asked me, he said that Mrs. Weyen was going to foreclose on this deal and this

(Testimony of Elfrieda May.)

would no go through unless her \$3,000 was paid or near that sum and he said there are no creditors are going to put that up, and I said, "I will put up that money for it to get this paper through in an operating affair." I put up this money to make this agreement work. Otherwise, they were not going to even accept it, you see.

The Court: I see.

Q. (By Mr. Rowan): That was the payments due Mrs. Weyen under the divorce decree, was it not? A. That is correct.

Mr. Rowan: That is what I wanted, that is all.

The Court: Any other questions? [164]

Mr. Etter: No.

The Court: Time for a recess, the Court will recess for ten minutes.

(Witness excused)

(Whereupon a short recess was taken.)

Mr. Rowan: If the Court please, may we approach the bench?

The Court: Yes.

(Whereupon, the following proceedings were had before the bench:)

The Court: The residuary clause under paragraph designated Third: "All the rest, residue and remainder of my property, real, personal and mixed, at whatever time acquired by me and where-soever situated, I give, devise and bequeath to Emilie Mullins." That is the one you had in mind?

Mr. Etter: That's right.

The Court: You wish to stipulate as to Emilie Mullins?

Mr. Rowan: That she was the woman he was keeping company with.

Mr. Etter: Keeping company with.

Mr. Arnold: Further identification, she was a married woman.

Mr. Etter: She was a married woman at the time.

The Court: Oh, I see, all right. The record [165] may show that, then.

Mr. Etter: There is one other thing here and it is always a touchy subject. Now, Ed Stanfill was telling me he hasn't got too good a recollection of this. Keeton has got a letter there that he wrote to him about this last assignment and Ed came to his office and signed it. He wrote that letter in January when the Sun Life required it. I don't want a lawyer who is in this controversy on the stand at all to get into a hassle. However, Ed says he doesn't quite remember and, at the same time, I feel it our duty to have all the facts before the Court.

Mr. Arnold: However, since he came in, he didn't read the letter. That is the way I understood it.

Mr. Etter: No, he didn't.

Mr. Arnold: Then it is immaterial.

Mr. Etter: It would be material to this extent, that he talked about the purpose of signing it.

Mr. Arnold: I don't think that follows.

Mr. Rowan: If you go into that conversation, you open it up, if it is material.

Mr. Etter: Well, it is only material in this respect, that if Ed makes a flat statement he didn't know anything about this or didn't discuss it, it is material.

Mr. Arnold: Well, I think you ought to call him.

Mr. Etter: But he is a lawyer, he doesn't [166] want to be called and doesn't want to be in a position——

Mr. Rowan: We will waive the objection and he can argue the case to the Court, if the Court is agreeable to that.

The Court: Well, yes.

Mr. Etter: All right.

(Which was all of the proceedings had before the bench.)

Mr. Etter: Call Mr. Keeton to the stand.

The Court: It is understood that Mr. Keeton may testify as a witness here without sacrificing any rights he may have as an attorney in the case to argue or otherwise?

Mr. Arnold: That is agreeable.

Mr. Rowan: That is agreeable.

The Court: Or otherwise participate.

PAUL C. KEETON

called and sworn as a witness on behalf of the defendant Ralph B. Defenbach, trustee, was examined and testified as follows:

Direct Examination

Q. (By Mr. Etter): Your name is Paul C. Keeton? A. Yes.

Q. You are a member of the Idaho bar?

A. Yes. [167]

Q. And of this Court? A. Yes.

Q. And are one of counsel in this case?

A. That's right.

Q. And at the time of the drawing of the assignment for the benefit of creditors, you drew that document, Mr. Keeton?

A. Yes, I prepared the document.

Q. And who were you representing at that time, one, two, or three people, or one person, whatever it was?

A. Well, I was representing Mr. Weyen and Mr. Defenbach both in an attempt to make some arrangement for Mr. Weyen's creditors.

Q. For Mr. Weyen's creditors. Now, with respect, Mr. Keeton, to certain policies that are involved in this litigation, and I refer now to all of those policies that are involved in the present litigation except the one in the first count of the interpleader complaint— A. Yes, sir.

Q. —did you secure an endorsement of Mr. Stanfill on what is indicated as an assignment for

(Testimony of Paul C. Keeton.)

value, being part of Plaintiff's Exhibit 11, which I hereby show to you? A. Yes, I did.

Q. And do you know or do you remember where that was signed?

A. It was signed in my office in Lewiston. [168]

Q. And can you tell us what the circumstances were surrounding it?

A. Well, that had gone into the Sun Life Company without Mr. Stanfill's signature on it, and on January 13, 1955 they wrote me a letter asking me to get Mr. Stanfill to sign it along with Mr. Weyen.

Q. Is that the letter there that you received from the Sun Life? A. Yes.

Q. Open to these gentlemen's inspection if they wish to see it? A. Yes.

Q. Pursuant to that, what did you do?

A. I wrote Mr. Stanfill, who I knew was over in Oregon farming at the time, care of Donald Moore, attorney at Clarkston, asking him to sign this document, and before I could mail the letter, he came into my office and signed it in my office so I never mailed the letter.

Q. Mr. Stanfill did? A. Yes, he did.

Q. Did you discuss at all with Mr. Stanfill the purpose of executing that document?

A. Only that the insurance was being transferred to the pool of November 16, 1954.

Q. You advised him of that? [169]

A. Yes, I am sure that I did.

Mr. Etter: That is all.

(Testimony of Paul C. Keeton.)

Cross Examination

Q. (By Mr. Arnold): Mr. Keeton——

Mr. Arnold: Excuse me, am I in order?

The Court: Yes, you may go ahead.

Q. (By Mr. Arnold): May I see the Sun Life letter which you said was open to inspection?

A. Yes, sir.

(Witness hands letter to counsel.)

Q. This is the letter, as I understood you to testify, that you received from the Sun Life Assurance Company, which is dated January 13, 1955?

A. Yes, it is.

Q. May I have it marked for identification?

A. Certainly.

Mr. Arnold: Mr. Clerk, will you staple those together and mark it for Defendant Stanfill's identification number?

The Clerk: 28.

Mr. Arnold: 28. Stanfill's 28, your Honor.

Q. (By Mr. Arnold): Now, Mr. Keeton, in the opening paragraph of that letter, the author refers to loan papers in connection with the policies, does he not? A. Yes, he does. [170]

Q. He doesn't refer to any assignment or change of beneficiary there?

A. Not in the first paragraph, no.

Q. Does he at any place in that letter refer to change of beneficiary?

A. I don't think he does refer to that, no.

Q. Where in the letter does the author refer to anything other than loan?

(Testimony of Paul C. Keeton.)

A. Well, he does in the second paragraph, he says: "This agreement is conflicting, however, in that it apparently grants to both the trustee and Mr. Weyen under separate clauses the right to pledge the policy contracts as collateral, etc.

In November 1954 Mr. Weyen re-assigned the policies to Ralph B. Defenbach, trustee under that certain assignment to trustee for benefit of creditors, dated November 16th, 1954. In view of the contradictions of the trust agreement with Mr. Stanfill, we believe he should join in the new assignments, dated November 16, 1954, thereby eliminating any possible interest he may have retained. We are taking the liberty of attaching the original of the assignment for Mr. Stanfill's signature."

That is the document that is part of 11.

Mr. Arnold: If the Court please, I will offer in evidence Defendant Stanfill's Exhibit 28. [171]

Mr. Etter: No objection.

Mr. Keeton: No objection.

The Court: It will be admitted, then.

(Whereupon, the document was admitted in evidence as Defendant Stanfill's Exhibit 28.)

Q. (By Mr. Arnold): Now, Mr. Keeton, you stated a few minutes ago that you were acting as attorney for Mr. Weyen and Mr. Defenbach in an effort to work something out for creditors, is that substantially correct? A. Yes.

Q. Did you ever see any of these policies in question that are subject to this litigation prior to

(Testimony of Paul C. Keeton.)

the execution of Defendant Defenbach's Exhibit 27 on the 16th day of November, 1954?

A. I am certain that they were in my safe for a long time prior to that, off and on.

Q. Did you ever examine them?

A. I never examined them.

Q. Did you know the way the beneficiary had been previously endorsed upon the policies? Mr. Stanfill as trustee, I mean?

A. I never knew anything about the Stanfill trust until about a week after this was entered into. When he brought [172] the policies over, then I knew about it.

Q. I thought you said they were in your safe for a long time before that was executed?

A. Yes, but I never knew their contents.

Q. When you say he brought them over a week afterwards, what do you mean?

A. I said they were in and out of my safe. If you wish, I can explain that.

Q. Pardon?

A. I can explain it, if you wish.

Q. You contend, then, that you did not know that Mr. Stanfill was trustee of any sort at all until after the 16th of November of '54?

A. I am just about positive that I did not.

Mr. Arnold: That will be all.

Mr. Etter: That is all.

(Testimony of Paul C. Keeton.)

Cross Examination

Q. (By Mr. Rowan): Mr. Keeton, where were the policies when Bob Weyen died?

A. When Bob Weyen died, I am certain they were down in the cabin at the Sacajawea Motel.

Q. In Bob Weyen's possession?

A. Either in Bob Weyen's possession or Mr. Deffenbach's. It seems to me they were in a tin box in the Sacajawea Motel. [173]

Q. Don't you recall, as a matter of fact, that Mrs. May brought those policies to your office and gave them to you after Bob Weyen's death?

A. That's right, and they were at the motel.

Q. Yes. The motel, that was where Bob was living?

A. That's right, that is where she got them, from the Sacajawea Motel.

Q. That is what I am asking, if they weren't in Bob's possession at the time he died?

A. Yes, I think they were.

Q. The first agreement that you presented to Bob in the fall of 1954, he refused to sign, did he not?

A. Well, it was certainly re-drafted several times.

Q. Yes, you re-drafted it? A. Yes, it was.

Q. And you knew at the time you re-drafted that agreement that Mrs. May was paying the premiums on those policies, did you?

A. I knew that she had loaned him money and

(Testimony of Paul C. Keeton.)

I knew at some time she had paid the premiums on the policies, yes.

Q. Now, the Sun Life sent you a request for assignment of policies on their form, did they not, printed form? A. Yes.

Q. The one that is in the file?

A. Yes, I am sure they did. [174]

Q. They never did send you any request for change of beneficiary, did they?

A. No, they never did.

Q. Did anyone ever request that?

A. Never that I know of.

Mr. Rowan: That is all.

Mr. Etter: That is all, Mr. Keeton. That is all.

(Witness excused)

Mr. Rowan: I think we rest, too, if the Court please.

The Court: Is that all of the evidence, then, gentlemen?

Mr. Etter: That is all, your Honor.

The Court: Are you ready to proceed with the argument?

Mr. Etter: Yes.

The Court: You may proceed if you are ready.

Mr. Etter: And as I understand the rule, the burden is upon the party who contends for an irrevocable trust, your Honor, that he must prove it by clear and convincing, rather than a preponderance, of evidence, so these people who are making that claim of irrevocability, I think they have the laboring oar.

Mr. Rowan: We are ready to assume the burden.

The Court: Oh, say, I think that Exhibit No. 27 has never been admitted in evidence. [175]

Mr. Etter: That's right.

The Court: We got off the track here after it was identified.

Mr. Etter: Yes, I will move that that be admitted.

Mr. Rowan: No objection.

The Court: It will be admitted, then, Exhibit 27.

(Whereupon, the document was admitted in evidence as Defendant Defenbach's Exhibit 27.)

The Court: Are any of the others not admitted here, Mr. Taylor?

The Clerk: No, sir.

Mr. Rowan: If the Court please, may we have this formal objection on the record, that it is immaterial for our purpose?

The Court: Yes, the record may show that objection.

(Whereupon, oral argument was made to the Court by counsel for each of the respective parties, after which the following proceedings were had, to-wit:)

The Court: I haven't made up my mind about this case and I shall not do so until I have an opportunity to look at the authorities and, despite complimentary statements of counsel, I don't feel that I know enough about the laws of trust as applied to this particular case to decide [176] this off the cuff.

I am a little concerned here, I like to feel that

when I decide a lawsuit it is going to be finally decided and not go off on some question or issue other than the merits, and I am frankly a little concerned about the lack of showing here as to what creditors may remain unpaid or the amount of the creditors' claims that are covered by this assignment. It would seem to me that an assignment for the benefit of creditors could only be good to the extent of the amount of creditors' claims, and what is there here in the evidence in this cause in the record as to the amount that it would take for this trustee to pay out the creditors of this deceased?

Mr. Etter: All of the creditors' claims are attached in a schedule on the agreement and I can put the trustee on, if the Court wishes, and have him testify to that.

The Court: As I said, I assumed that there was a statement of creditors' claims attached to the assignment for benefit of creditors, but there has also been evidence of certain items turned over of personal property and there were certain loans on policies, and as to how much has been paid on these claims and how much the assets remaining amount to, I don't know.

I would prefer to permit you to re-open and show that definitely. I don't know whether it would prove to be material, but I at least want a little facts in evidence before [177] we submit the case.

I assume from what has been hinted here, at least, or perhaps stated that the amount of the

creditors' claims are more than the amount deposited into court.

Mr. Etter: It is far in excess of that.

The Court: Well, all right.

Mr. Defenbach: Do you wish me to address just the Court on this?

Mr. Etter: Just have the chair there.

The Court: You have already been sworn, it is not necessary to be sworn again.

RALPH B. DEFENBACH

having been previously sworn, resumed the stand and testified further as follows:

Direct Examination

Q. (By Mr. Etter): First, I think the Court would like to know about the matter of loans that have been made on the policies. I think you testified that that money was taken into the trust fund?

A. Yes.

Q. Do you have that now? A. Yes.

Q. And have other monies been collected by the trustee?

A. You mean during the period of the [178] trust?

Q. Let's put it this way: At the time of the execution of the trust, these claims were made and attached to that trust agreement, is that correct?

A. Yes, the circumstances of the trust were this, if you would let me detail them.

Q. All right.

(Testimony of Ralph B. Defenbach.)

A. This is my own personal copy of this trust agreement that I retained. It is \$140,879.51.

The Court: Was that at the time of the assignment for the benefit of creditors?

A. On November 16, yes, at the time that I signed this.

The Court: All right.

A. Now on the morning that I signed this agreement, I went up to the Internal Revenue office with Mr. Weyen and with Mr. Oye, who is the manager of the Lorenz Lumber Company. The Federal government had a lien against certain logs in the possession of the Lorenz Lumber Company on account of indebtedness on the part of Bob Weyen to the Internal Revenue Department. Mr. Oye, as manager of the lumber company, owed Bob Weyen some certain amounts of money. In addition to the amounts that he actually owed, he made certain advances in the form of cash and that cash was turned over to me at that point and I wrote a check to the Federal government for the amount that they agreed they would accept as a release [179] of this claim.

Q. Do you remember how much that was?

A. No, I don't.

Q. All right.

A. I handled probably some hundred thousand dollars.

Q. What was that?

A. I handled probably a hundred thousand dollars during the period that I was in this trust. See,

(Testimony of Ralph B. Defenbach.)

we were conducting a logging operation and large amounts of supplies to pay for, stumpage to buy, labor to pay, current obligations to taxing agencies for various types of payroll taxes and other taxes.

The Court: Pardon me, then everybody can ask further questions, I am trying to shorten this. Could you tell us in round numbers approximately how much is the balance owing to the creditors?

A. There have been no payments made to any of the creditors listed on this statement.

The Court: Well, it would be \$140,879.00 and perhaps some accumulated interest?

A. That is right. Besides that, the assets that are listed in here are now of no value.

The Court: Well, I was just going to ask you a follow-up question on that. You say that is the amount remaining unpaid. What is the value of all the assets that might be [180] applied to the creditors?

A. There are no assets except what interest the trustee may have in these insurance policies.

The Court: I see. Any other questions, gentlemen?

I might say that, if you wish, the record may show an objection on your part to my permitting the re-opening of the case at this late stage, and the only purpose of it was to show the amount owing to the creditors. I am not going to consider it in any other respect.

Do you have any questions you would like to ask him?

(Testimony of Ralph B. Defenbach.)

Mr. Arnold: Yes. I not only object to the re-opening, and wish the record so to show——

The Court: That is what I suggested.

Mr. Arnold: I think that some of the statements made by Mr. Defenbach would bear a little cross examination.

The Court: You have the privilege.

Mr. Arnold: And perhaps the Court would be further enlightened.

Mr. Etter: I would like first for the record to show that counsel for Mr. Defenbach would have elicited this information except that we had no understanding that these people were making any claims so far as the matter of the trusteeship account on the debts owing was concerned. They have made none in this case and have given us [181] none here. I just say that in answer to counsel's objection to re-opening.

The Court: All right, go ahead. I think the Court has a pretty wide discretion in the matter of re-opening, I am not concerned about that.

Mr. Arnold: I am not either, your Honor.

The Court: All right, you may cross examine.

Cross Examination

Q. (By Mr. Arnold): Mr. Defenbach, the figures you gave to the court, one hundred forty thousand some odd dollars, were the claims listed at the time of the execution of the agreement on November 16th, 1954? A. Yes.

Q. That was nearly a year ago, wasn't it?

(Testimony of Ralph B. Defenbach.)

A. Yes.

Q. Have you made any accounting of any kind, nature, or description to anybody since that time, either of funds received and disbursed or property on hand or anything else?

A. Yes, the committee has an accounting.

Q. The committee? Who is the committee, anyway, of the parties to this action?

A. The committee that is recited in here and which are associated with me.

Q. It is true, is it not, that the executor [182] of the estate of Robert F. Weyen has demanded of you an accounting of the assets taken over by you as trustee through your counsel?

A. No, I don't think so.

Q. Through your counsel, Mr. Keeton?

A. No.

Q. Isn't that true? A. No.

Q. Now, Mr. Defenbach, I want to be fair with you. Are you sure that is not true? Let me ask that in a little different form——

A. Ask my counsel, because I haven't been advised of such a thing.

Q. Let me ask you if Mr. Feeney, attorney for the executor in the Idaho administration of this estate, has not demanded an accounting through Mr. Keeton, attorney for you as assignee?

A. You would have to ask Mr. Keeton that question, I couldn't answer it.

Q. Doesn't Mr. Keeton pass those demands on to you?

(Testimony of Ralph B. Defenbach.)

Mr. Etter: Well, now, I think that probably if he wants to ask Mr. Keeton, he can find out.

Mr. Arnold: Mr. Keeton is not on the witness stand. Let me finish——

Mr. Etter: He says he doesn't know, [183] Mr. Arnold. Why don't you call——

The Court: The answer is he doesn't know.

A. No, I am not aware of any such demand.

Q. (By Mr. Arnold): All right, there were quite a lot of timber contracts and property listed in that contract a year ago, was there not?

A. Yes, quite a lot of stuff listed here.

Q. But you have made no accounting except to the committee, is that right?

A. Yes, that is right.

Q. And a good many of the contract holders repossessed their personal property, did they not?

A. Yes, all of the equipment was taken over by contract holders.

Q. That also takes them out of the picture as creditors, does it not? A. Yes.

Mr. Arnold: I think that will be all.

The Court: Any other questions?

Cross Examination

Q. (By Mr. Rowan): Do you know anything about a \$7,500 item that was paid by you or anyone representing you in this matter?

A. \$7,500? Who would it have been to?

Q. Some machinery company? [184]

A. No, I think the only payments that have

(Testimony of Ralph B. Defenbach.)

been made to the machinery companies through this trust were on the monthly contract payments.

Q. And you know, too, that Mrs. Mary Weyen was paid some \$3,000, don't you?

A. Not out of this.

Q. Not out of that. You know also that over \$70,000 was collected after you took over the trust agreement, don't you?

A. You mean that that was the income?

Q. Yes, the total income?

A. Yes, might have been even more than that. I said I thought it was \$100,000.

Q. Was that applied upon the \$140,879?

A. Ask your question again, please.

Q. Was that amount of \$70,000 to \$100,000 applied upon the \$140,879.51?

A. Essentially, no, because——

Q. What do you mean by essentially?

A. Because any payments that we made on the conditional sales contract would reduce the amount that we owed on conditional sales contracts had we been able to live up to the continuation of the agreement, but we were unable to do that and the equipment was repossessed and we lost those amounts of money, so they couldn't be [185] reductions of indebtedness.

Q. The amount that was paid by you as assignee for creditors and then the property was lost after Mr. Weyen died? A. That is correct.

Mr. Rowan: I think that is all.

A. You see, this property passed into the hands

(Testimony of Ralph B. Defenbach.)

of Mr. Stanfill as the executor of the estate after Bob Weyen died. They were no longer in my possession.

Q. (By Mr. Rowan): It wasn't any longer in your possession? A. No.

Q. What were you doing, then, as assignee for the benefit of creditors after Bob's death?

A. I haven't done anything. I have had no funds to operate with. I haven't done anything.

Q. You have done nothing since his death, is that correct? A. That is——

Mr. Etter: He said he had no funds to operate with.

Mr. Rowan: I am asking if that is his answer.

A. As trustee for Bob Weyen, I had no funds to operate so I did not function.

Mr. Rowan: That is all.

The Court: Any other questions?

Mr. Etter: That is all.

The Court: That is all, then. [186]

(Witness excused)

The Court: As I say, that may be an excess of caution on my part, but I thought that that particular evidence should be in the record before we closed.

Is there anything else?

Mr. Etter: Yes, we would be prepared to submit some further authorities, if your Honor will permit. They have submitted a memorandum, if your Honor please, and if it is necessary——

The Court: I always welcome all the help that

I can get. If you have in mind submitting something that you haven't cited in oral argument.

Mr. Etter: That is correct.

The Court: I think the memorandum submitted by counsel appears to me from what opportunity I have had to examine it to be quite adequate and complete, and I would suggest that you have, say, a week. Would that be sufficient?

Mr. Etter: A week is enough.

The Court: To submit additional authorities, and you need not write a brief, just simply list your authorities and serve a copy on counsel, and then they will have an additional week in which to submit additional authorities, if they care to do so.

Is that acceptable, then, gentlemen?

Mr. Rowan: That is agreeable to me.

The Court: I wouldn't like extend this out [187] because I would like to get this decided without too much delay. But I will just give a week on a side then and I am beginning with the Defenbach defendant here because of the memorandum submitted already by you gentlemen. I will simply give them an opportunity to submit them and you can submit a reply list, if you wish to, within the additional week.

Is there anything else?

Mr. Arnold: I would like to make one comment limited entirely to the testimony given on the reopening.

I would like to say that the testimony given by Mr. Defenbach shows what the condition was approximately one year ago upon the execution of

this assignment. By his own testimony, he has done nothing since, he has paid nobody any money, he has permitted the property to escape and be squandered, but at the same time——

Mr. Etter: Just a minute——

Mr. Arnold: Just a minute now, I am talking.

Mr. Etter: I will object to your remarks, then.

Mr. Arnold: Permitted the property to be dissipated, and I will stand on that by his own testimony, that he has shown nothing on which this Court can gain any benefit from his testimony as to the amount of debts which might have been due either at the time of Bob Weyen's death or as of today. It is just out of date and it is sketchy and it is too remote and there are too many possibilities and shows us nothing in [188] the way of establishing any claim to these funds, and I will say particularly against the interests of the minor children.

The Court: I don't feel that I have Mr. Defenbach's report or the accounting of his conduct before me for passing upon it at this time. I have other troubles and other questions.

I will adjourn until tomorrow morning at 10 o'clock. [189]

[Endorsed]: Filed February 20, 1956.

[Endorsed]: No. 15080. United States Court of Appeals for the Ninth Circuit. E. J. Stanfill, as Trustee, and Elfrieda May, Appellants, vs. Ralph B. Defenbach, as Trustee, Appellee. Transcript of Record. Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed: March 19, 1956.

Docketed: March 28, 1956.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 15080

E. J. STANFILL, as Trustee, and ELFRIEDA
MAY, Appellants,
vs.

RALPH B. DEFENBACH, as Trustee,
Appellee.

ADOPTION OF STATEMENT OF POINTS
AND DESIGNATION OF RECORD

E. J. Stanfill, as Trustee and Elfrieda May, Appellants in the above entitled action, hereby adopt the Statement of Points upon which they will rely herein and the Designation of record to be printed

as shown in the transcript of record sent up by the Clerk of the lower court and shown at pages 212 and 215 respectively of the typewritten transcript, as served upon appellee and filed in the Court below.

Dated this 24th day of March, 1956.

E. J. STANFILL

As Trustee, and

ELFRIEDA MAY,

Appellants

/s/ By S. DEAN ARNOLD,

/s/ By C. C. ROWAN,

Their Attorneys

Acknowledgment of Service attached.

[Endorsed]: Filed Mar. 28, 1956. Paul P. O'Brien,
Clerk.

